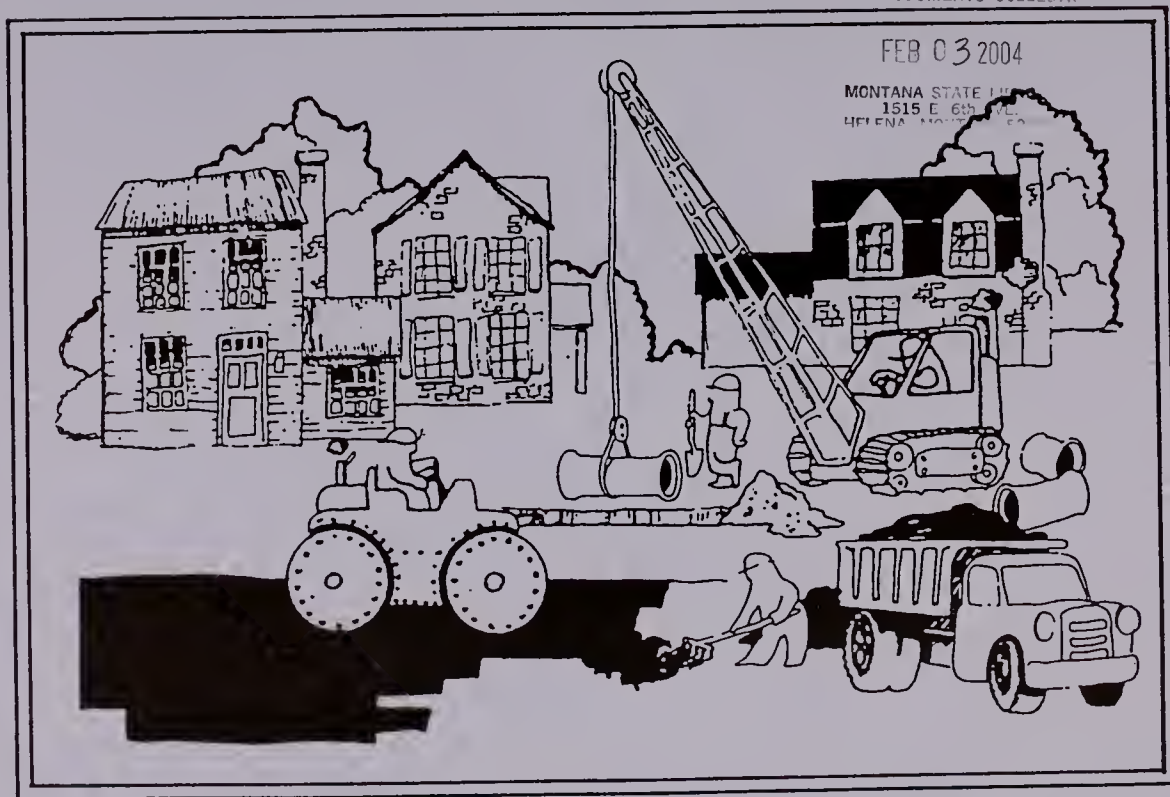


# TREASURE STATE ENDOWMENT PROGRAM

## PROJECT ADMINISTRATION MANUAL

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**MONTANA'S  
TREASURE STATE ENDOWMENT PROGRAM**

**2005 Biennium Projects  
*Project Administration Manual***

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## INTRODUCTION

As you begin the task of preparing to start up and implement your Treasure State Endowment Program (TSEP) project, it is completely understandable that you may have some concerns about the responsibilities you are taking on and how to go about meeting them. However, the same skills that you used to compete successfully for a TSEP award will help you through the process of implementing your project. We suggest that you follow a step-by-step approach through the various requirements covered in the TSEP Project Administration Manual, similar to the process you followed in preparing your TSEP application.

Try not to be intimidated by the volume of the manual. In contrast, to federally-funded programs, such as the Community Development Block Grant (CDBG) Program, which are subject to a wide variety of federal laws, regulations and executive orders, administering a TSEP project is comparatively straight forward. As a general rule, whenever federal and state requirements both apply to a situation, the more restrictive requirements govern. If your TSEP project will also be funded with federal funds, the frequently more restrictive federal requirements will usually supersede those of the state. Consult with the TSEP liaison for your project if any questions arise.

As you get into the details of this manual, you will see that because it is written to cover a variety of situations, it covers a number of requirements and procedures that may not apply to your project at all. In many cases, a particular requirement applies only once and will not have to be dealt with again. In addition, whenever possible, we have provided sample forms and formats for letters, reports, resolutions, and many of the other administrative requirements you will have to comply with under state law and regulations. We hope that the materials we have provided will make the process of complying with state requirements as easy as possible.

We have tried to make the written discussion of the various requirements very complete for a reason. In these times of tight budgets and increasing workloads, it is impossible for TSEP staff to provide on-site technical assistance as often as we would like. However, we have found that we can successfully work through most administrative problems over the telephone by using the text and the sample materials as references.

Compliance with the various requirements attached to any governmental program is the trade off for doing business with public funds. Viewed individually, the general goal of each requirement usually makes good sense. Few of us would argue with the need to avoid serious environmental impacts from government funded projects, to avoid collusion or conflicts of interest in government procurement, to assure proper management of public funds and to assure that workers on public projects receive full wages for a day's work.

The need for ensuring compliance with state requirements is a responsibility the Department of Commerce must and does take seriously in its monitoring and supervision of local TSEP projects. However, to the extent possible, the Department's oversight of local TSEP projects is committed to simplifying project administration and working with local officials to either prevent problems or correct them before they become serious. Our end goal is to assist you in successfully completing your TSEP project with a minimum of difficulty.

We look forward to working with you on your projects. Please call us if we can be of assistance.

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# CHAPTER I

## PROJECT START-UP

### OVERVIEW

This chapter summarizes the key considerations and important first steps that you will need to accomplish as you start your project with Treasure State Endowment Program (TSEP) funds, including:

- information about TSEP funds and the timely completion of your project,
- complying with project start-up requirements, including:
  - ✓ preparing and amending the contract,
  - ✓ preparing a management plan for project administration,
  - ✓ complying with accounting, auditing and reporting requirements,
  - ✓ obtaining the firm commitment of non-TSEP funding, and
  - ✓ complying with any special conditions,
- completing authorized signature and depository forms, and
- establishing project files.

As a summary, a checklist of start-up activities is included at the end of this chapter.

### A. APPLICABLE STATE REQUIREMENTS

#### 1. The Montana TSEP Application Guidelines for Public Facility Projects

These guidelines set out the basic requirements governing an application for TSEP funds and describe the various conditions that attach to projects selected for funding.

#### 2. The Montana TSEP Project Administration Manual

This manual describes the policies and procedures governing administration of TSEP projects by TSEP recipients. The Montana Department of Commerce

(MDOC) has adopted both the TSEP Application Guidelines and Project Administration Manual by reference, as administrative rules under the Montana Administrative Procedure Act. (Cite: ARM 8.97.3702) Compliance with these and other applicable requirements are specific conditions of the contract between MDOC and the TSEP recipient.

The following pages discuss the major steps that typically take place in starting your project.

## **B. TSEP Funds**

### **1. Amount of TSEP Funding**

The maximum amount of funding available for each TSEP project is determined through the legislative appropriations process. The amount of funds that have been approved for each TSEP recipient are established in House Bill 11. **In no case can MDOC provide additional funds beyond the amount of TSEP funds approved by the Legislature.**

The legislative appropriation of funds does not imply approval of all activities or specific costs proposed in the application submitted. The proposed work program and budget may be subject to modification during contract negotiations between the applicant and MDOC.

### **2. Incurring Costs**

TSEP funds are appropriated by the Montana Legislature for a two-year period or "biennium." Local governments approved for TSEP funding are funded with revenues obtained from the interest earned on the Treasure State Endowment Fund during the biennium. The TSEP funds become available for disbursement gradually as interest is earned on the Treasure State Endowment Fund over the two-year biennium period. Interest earned on the Treasure State Endowment Fund during a biennium can only be used to fund projects approved for that biennium.

**The Legislature's approval of TSEP funding for a project does not, by itself, authorize TSEP recipients to begin incurring costs.** Communities selected for TSEP funding do not automatically have authorization to obligate any TSEP funds for hiring staff, consultants, engineers, or paying their salaries. Likewise, it is premature to spend or commit any funds for any construction activities. These activities should not be undertaken until you have firm commitments from all funding sources and have authorization from MDOC. Another important point to remember is that **TSEP funds cannot be used to reimburse a TSEP recipient for any costs incurred prior to legislative approval of the TSEP project**, such as expenditures

associated with application preparation or previous engineering studies or plans. In addition, TSEP funds cannot be used to reimburse a TSEP recipient for any unauthorized costs incurred prior to a signed TSEP contract.

**TSEP funds will not actually become available for reimbursing eligible expenditures until all TSEP start-up requirements have been complied with and a letter of authorization called a "Notice to Proceed" is issued by MDOC.** Prior to receipt of the TSEP "Notice to Proceed," all project expenses must be paid out of local government funds until TSEP funds become available to reimburse the TSEP recipient.

In the event a contract is not executed, a project is unable to comply with the terms and conditions of the contract, the project budget does not include sufficient funds for a particular expenditure, or if funds are obligated or costs incurred without proper authorization, any costs incurred will be the responsibility of the local government.

**TSEP recipients that are guaranteed funding through HB 11 must meet the start-up requirements discussed in this chapter prior to the end of the biennium in order to maintain that guarantee of funding.** If a TSEP recipient with guaranteed funding meets the start-up requirements prior to the end of the biennium, and there are insufficient TSEP revenues during the biennium, the TSEP recipient will be funded first from the revenues from the next biennium. **TSEP recipients that do not complete their project start-up requirements before the end of the biennium lose the guarantee of TSEP funds, and could risk the possibility that they may not receive TSEP funds if revenues fall below projections during the biennium.**

HB 11 authorizes three additional projects for TSEP funding, but only if additional TSEP funds become available. It will not be known whether there are any additional TSEP revenues available for these projects until the end of the 2005 biennium (approximately July 15, 2005). If there are insufficient TSEP revenues during the 2005 biennium and those projects are not funded, they must re-apply for TSEP funding. Since the end of the 2005 biennium is after the next application deadline of May 7, 2004, these projects may want to re-apply for TSEP funds to be awarded by the 2005 Legislature. For these projects that may re-apply for funds, MDOC would add a provision in its recommendations to the Legislature that if any of these three additional projects receives TSEP funds through the 2005 biennium, they would only receive as much as originally requested.

Because TSEP funds accumulate gradually as interest is earned on the Treasure State Endowment Fund over the two-year biennium period, the total amount of funds appropriated for projects are not received until the end of the biennium. Sufficient funds are not always available to fund projects when local officials are

ready to proceed. **However, TSEP funds are typically available as soon as TSEP recipients complete their start-up requirements.** At the beginning of each month, funds are made available to those projects that have completed the start-up requirements. A “notice to proceed” letter will be sent notifying the local government that start-up requirements have been satisfied, TSEP funds are available, and the TSEP recipient can begin to draw down TSEP funds.

If the level of TSEP revenues used to pay project expenses becomes too low, MDOC may require projects that have met start-up requirements to wait until there are sufficient revenues again. In that case, MDOC will always start at the top of the priority ranking list as approved by the Legislature in order to make available TSEP funds to the highest ranked projects that are ready to proceed.

A project may be temporarily passed over for funding because the project had not completed start-up requirements, but this does not affect the project’s eligibility to receive funds at a later date. Projects that have met start-up requirements and that are temporarily passed over for funding will have the opportunity to receive TSEP funding as revenues become available.

If you want to get started before receiving a “Notice to Proceed,” you have the option of arranging interim financing. TSEP can reimburse the grant recipient once TSEP funds become available. However, if TSEP revenues fall short of projections, the TSEP recipient may be required to wait for funding from the next biennium’s funds if they have been guaranteed funding. Local governments that were not guaranteed funding in House Bill 11, and begin a project before receiving a “Notice to Proceed,” proceed at their own risk with the possibility that they will not receive TSEP funds. For details on when TSEP funds might likely be available for your project, contact the TSEP staff. (See Chapter 4, Financial Management for more information on interim financing or contact TSEP staff for details.) The procedures by which TSEP recipients are reimbursed are discussed in Chapter 4, Financial Management.

### 3. Timely Project Completion

TSEP recipients are expected to complete their start-up requirements as soon as possible and complete the project in a timely manner. The Department provides a status report on all projects still in progress to the Legislature. Along with recommendations from the Department, the Legislature reviews the uncompleted projects for its consideration of whether to continue funding them. In particular, projects that have not completed the start-up requirements are scrutinized in order to determine if a previously authorized grant should be withdrawn. **Those projects that have not met their start-up requirements before the Legislature meets, are subject to having TSEP funds reallocated to other projects. In addition, a TSEP recipient that fails to commence or complete its project in a timely**

manner may also have previously authorized TSEP funds withdrawn and reallocated to other projects.

The Department will retain two percent of the total grant amount until the TSEP recipient submits the documentation necessary to close out the project. The report is required within 90 days after a Certificate of Substantial Completion has been issued for the completed project. If the TSEP recipient fails to submit a closeout report within the required timeframe, the Department will refer the project back to the next Legislature for its consideration of whether these remaining funds should be re-allocated to other TSEP projects. (For more information on the closeout report, see Chapter 11, Project Closeout.)

## C. PROJECT START-UP REQUIREMENTS

### 1. Preparing the TSEP Contract

The first start-up requirement is the TSEP agreement or contract. The TSEP contract is the legal document that governs the administration of the grant and includes the following items:

- the amount of TSEP funds to be provided;
- the scope of work to be completed;
- a detailed budget for the TSEP funds and any other funds involved in the project;
- the schedule for implementing the project;
- any special conditions associated with the grant; and
- the general terms and conditions associated with the grant.

The process of preparing the contract will include fine-tuning the project budget and implementation schedule, and identifying the scope of work to be completed. The TSEP application, as approved by the Legislature will also become a part of the contract.

Each contract consists of:

- provisions common to all TSEP contracts, generally referred to as "boilerplate" (such as provisions regarding contract termination, modification

and amendment; method of payment; conflict of interest; and compliance with applicable laws and regulations); and

- provisions specific to the agreement between the State and the TSEP recipient (such as provisions regarding the amount of the grant, the scope of work, the project budget, project implementation schedule, and any special conditions).

### **Note for Tribal Governments**

In accordance with the TSEP statutes, agreements entered into with tribal governments must contain, in addition to other appropriate terms and conditions, the following conditions:

- a requirement that in the event that a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the First Judicial District of the State of Montana;
- an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and
- an express waiver of any right to exhaust tribal remedies signed by the tribal government.

In addition, the Secretary of the United States Department of the Interior must approve the agreement with a tribal government, whenever approval is necessary.

A sample TSEP contract is included in Exhibit 1-A. The TSEP liaison assigned to your project will prepare a draft contract for review by local officials. The draft will reflect the key elements of the project as described in the original TSEP application. Local officials should pay particular attention to the sections addressing grant amount, scope of work, project budget, project implementation schedule, and any special conditions.

#### **a. Scope of Work**

The scope of work will include those activities that were described in your TSEP application. In addition, if the TSEP recipient has not already developed and adopted a current Capital Improvements Plan that covers a five year period, that activity will also be required under the scope of work.

b. Project Budget

A project budget was submitted with each application. The project budget must be updated to make sure that all funding sources are current, each budget item has been identified and the amount budgeted is correct. If the project involves funding through other state or federal programs, you may also have to consider any limitations on the use of those funds as you prepare the overall project budget. Some programs allow their funds to be used for only certain purposes, and these constraints should be kept in mind when you decide which funding source will finance each component of the project. You will also have to consider the timing of the availability of those other funds in preparing the budget.

Sometimes the funding from a particular source may be split between two or more fiscal years and the project is split into components and multiple phases by the funding source. Depending on the firmness of the commitment of the other funds: 1) TSEP funds may be provided in the same proportion as is being provided by the other funding agency; or 2) TSEP funds may be withheld until the final phase when all funds are firmly committed.

It is important to discuss your proposed budget with each funding source before you finalize and submit your project budget, to ensure that what you have proposed is acceptable to all of the funding sources. An example of a project budget is included as part of the Model TSEP Contract in Exhibit 1-A. This sample budget is only a guide since each project will have unique elements that will have to be considered.

When the project is ready to begin the construction phase, the project budget will need to be revised to reflect the actual amount in the construction bid. **In the event that the construction bid is less than the budgeted amount, the construction line item must be revised to reflect the reduced costs.** The amount budgeted for construction in the project budget may be reduced by an amount in proportion to the reduction in the amount required for construction. For example, if the overall savings were 20 percent, the amount to be provided by TSEP for construction activities would be reduced by 20 percent. Any savings would then be added to the contingency line item amount.

If there are any savings upon completion of the project, MDOC reserves the right to share proportionately in those savings with all funding sources. The TSEP recipient may request to use the difference between the final actual project costs and the original grant award to fund additional work that further enhances the system. However, MDOC will not approve the request until the original project is completed or at least close to completion and the total cost can be determined. Before MDOC makes a determination to allow the additional scope of work, the TSEP recipient must demonstrate that the additional work will:

- be consistent with the intent of the original proposed project approved by the Legislature;
- clearly enhance the overall impact of the original project; and
- be able to be completed with the excess funds in a timely manner.

The TSEP recipient should send the TSEP liaison a written request to use remaining TSEP funds for the additional work activities, including full rationale and cost details, for MDOC's review and approval.

While MDOC typically allows additional work activities to be funded with remaining TSEP funds, the decision to do so is strictly at the discretion of MDOC and will likely not be allowed when the actual TSEP interest earnings received by MDOC are less than what has been projected for the biennium. As a result, the remaining TSEP funds may be reallocated for other TSEP projects.

In addition, in the event that actual project expenses are lower than the projected expense of the project as presented in the TSEP application, MDOC may, at its discretion, reduce the amount of TSEP grant funds so that the projected average residential user rate does not become lower than the target rate.

#### c. Project Implementation Schedule

A project implementation schedule was submitted with each application. The implementation schedule identifies the tentative time frames for major activities throughout the project. As you prepare your final implementation schedule for the TSEP contract you should make sure that all key tasks have been identified and more precisely define when they must be accomplished to complete the overall project. An example of a project implementation schedule is included as part of the Model TSEP Contract in Exhibit 1-A. This sample schedule is only a guide since each project will have unique elements that will have to be considered.

The schedule should be posted for periodic reference to compare actual work completed with the original planned schedule. Even more helpful is the use of a "Plan-a-Year" calendar or a computerized calendar program that lays out twelve months at a glance so that the manager can note key milestones month by month along with other specific dates for project work tasks. The key concern for grant administrators is not to let those key deadlines get "out of sight and out of mind." It is important that the implementation schedule be kept up to date. Furthermore, when the project is ready to begin the construction phase, the implementation schedule must be revised to show all major milestones that will be accomplished during the construction phase. This information should be available from the project

engineer. Your project liaison should be notified of any changes in the implementation schedule.

MDOC recommends that the local government's attorney review the contract, in draft form, to ensure that it is consistent with the community's legal authority and interests. Any concerns should be communicated to the TSEP staff assigned as liaison for the project. Once agreement is reached on the content, the TSEP liaison will send the final contract to the TSEP recipient to get signed by the local government's chief elected official(s) or executive officer. Three copies of the final contract will be prepared and each will require original signatures. All three copies must be returned to MDOC for the Department director's signature. One copy will be returned to the TSEP recipient. The remaining two copies will be retained by MDOC.

### **Amending the Contract**

It is difficult to prepare a budget and an implementation schedule that will not need changing at some point during the project. Changes to the implementation schedule and project budget are expected and are typically a routine part of the project. However, changes to the TSEP portion of the budget that involve moving \$5,000 or more from one line item to another require approval in advance.

Modifying the scope of work, especially if they involve significant changes, are not considered routine and potentially can have a significant impact on the project being able to proceed.

**In accordance with House Bill 11, the Department cannot approve amendments to the scope of work or budget affecting priority activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the Department and approved by the Legislature and the Governor.**

Significant changes to the scope of work or budget could jeopardize the TSEP funds if the Department determines that the proposed amendments could "materially alter the intent and circumstances" under which the project was originally approved. **As a result, the Department may refer any significant changes to the scope of work or budget to the next regular session of the Legislature for its review and approval.** Local governments that have already been provided with a "Notice to Proceed," that request a modification that significantly affects the scope of work or budget, may have their TSEP funding temporarily suspended until the next session of the Legislature.

Continued on the next page.

An example of a significant change to the scope of work would be if the TSEP recipient wanted to eliminate a portion of the proposed project, which would result in one or more of the deficiencies identified in the application remaining unresolved. However, changes to the selected design alternative identified in the preliminary engineering report are not considered a significant change to the scope of work as long as the major deficiencies identified in the TSEP application are resolved.

Significant modifications to the budget or the scope of work will require approval in advance. Before MDOC makes a determination to allow the amendment, the TSEP recipient must provide a written justification that clearly demonstrates that the modification is appropriate and necessary. MDOC may require that a public hearing, with reasonable notice, be conducted by the TSEP recipient if the proposed amendment is determined to be a significant enough change in the project.

## 2. Preparing the Management Plan

The next step is for local officials to prepare a management plan to assign roles and responsibilities to specific individuals for the day-to-day administration of the project. As we proceed through this manual, keep in mind that someone will have to be responsible for assuring compliance with all of the requirements that are described in this manual. **Reasonable and appropriate costs for grant administration are eligible for reimbursement with TSEP funds if provided for in the project budget that is part of the contract between the TSEP recipient and MDOC.** A maximum of 10% of the TSEP portion of the project budget may be used for administrative expenses.

A very common problem in the management of a project of this magnitude is that local officials, or staff, assume that someone else is taking care of a particular requirement or work task. Preparation of the management plan will allow local government officials and the TSEP staff to have confidence that someone has been assigned to assure compliance with all the necessary requirements before the project proceeds. This will also allow local officials and MDOC to monitor the completion of the project more effectively.

As a condition of the TSEP contract terms, all TSEP recipients are required to prepare and submit a management plan that specifically demonstrates to MDOC how and by whom the grant will be managed. More specific information regarding the suggested content of the plan is contained in Exhibit 1-B, Management Plan. In addition, a sample management plan has been provided as an example in Exhibit 1-C. Local officials can adapt features from the sample to fit their particular situation.

These grants are managed either by the TSEP recipient directly or by a private individual or consulting firm hired to manage the grant activities. The local governing body may designate an existing employee (such as a planning director, public works superintendent or clerk) as the TSEP grant manager, or may hire a new employee to manage a grant. In some cases, the local government may choose to contract with an existing special purpose agency, such as an economic development corporation, to manage a grant. An interlocal agreement and other special steps may be necessary in such cases. Montana law also allows the option of grant administration by another local government through an interlocal agreement.

An Interlocal Agreement is required when the TSEP recipient contracts with another local government agency to administer TSEP funds. See the sample Interlocal Agreement, Exhibit 1-D.

**Regardless of whom the TSEP recipient selects to manage the grant, the direct responsibility for complying with the TSEP grant and other state requirements, including the proper financial management of TSEP funds, rests with the governing body of the TSEP recipient.**

Local officials should understand that the administration of the TSEP grant and the project does not usually require the full-time attention of an employee or contractor from the beginning of a project to its completion. The work may involve several weeks of full-time research or intense periods of activity during bidding of construction work or during actual construction to assure compliance with state labor requirements. If local officials are considering assigning grant management duties to an existing employee, that employee must be capable of setting aside his or her regular duties during these peak periods of activity.

Local officials should also understand that it is not a prerequisite that local staff, or even a private contractor, have previous experience in administering a public facilities project in order to be an effective grant manager. The key concern for local officials is that the person who is assigned, hired or contracted to serve as grant manager have the demonstrated skills and capability to be a conscientious and effective manager. That person must be able to devote the time required, when it is required, to make sure that the necessary tasks are properly completed.

By administering a TSEP grant with its own staff a TSEP recipient will gain valuable experience that can be applied to other projects funded by other state or federal programs. Experience in successfully administering a TSEP grant can also enhance a community's ability to compete for other programs. Other funding programs may take into consideration a past TSEP recipient's performance in

managing grants. However, it is important to keep in mind that existing employees already have job duties, and unless some of these duties are temporarily shifted to another employee, the person assigned to manage the grant may not have the time to properly manage the grant. Overloading an employee with these additional duties sometimes results in employee “burnout” and they may decide to terminate their employment.

In many communities the local staff is already overloaded by their present work tasks and would be unable to shift responsibilities during the term of a TSEP project. In these cases, local officials may prefer to hire an outside contractor rather than to add a local employee that would have to be terminated at the end of the project. In other cases, the community's project may involve more complex, technical issues that local officials would prefer to have handled by experienced professionals. By bringing in outside consultants, the community reduces the lag time involved in learning detailed requirements or in researching management issues and benefits from the practical experience of their consultant.

If you decide to retain a consultant to help you with management of your TSEP grant, make sure that a local official or employee works closely with the consultant to gain a better understanding of the management issues involved. In many cases, where the community turns everything over to the consultant, all of the detailed knowledge about the project is lost when the project is done and the consultant leaves. Establishing a close working relationship with the consultant will also provide an excellent opportunity for training of local staff and will help improve communication between the community and the consultant.

There are some important considerations to keep in mind depending on who manages the grant:

a. Administration by Public Employees

**If local government employees will be responsible for TSEP grant management, and will be paid with TSEP funds or will be counted towards matching funds, be sure to document all expenditures of time and dollars associated with the administrative activities.** Samples of documentation include:

- employee's hourly time and attendance sheets;
- copies of travel vouchers with accompanying documentation;
- of all other direct expenses (e.g. telephone, printing and photocopying); and

- copies of all canceled checks or warrants for TSEP-related expenditures.

If TSEP funds will be used to pay public employees for work on a TSEP project, local staff should maintain brief logs summarizing daily activities in conjunction with the preparation of detailed hourly time sheets for TSEP-related work. The time sheets must clearly differentiate between time charged to the TSEP project versus time charged to other local government duties.

b. Management by Private Contractor

When an outside consultant will be hired for grant administration, the local government should use competitive procedures for procurement of services. These procedures are designed to protect the community and help assure that it selects a competent contractor at a reasonable cost. MDOC recommends that professional services are obtained through a "competitive proposal" process (requests for proposals or RFP's) as described in Chapter 3. **All contracts for grant management services to be paid for in part by TSEP funds must be submitted to MDOC for its review and approval, prior to execution.**

Remember that the local government must maintain effective control over and accountability for all funds. **If a consultant is hired for grant administration, the consultant cannot review or sign off on it's own work.** This becomes even more problematic if the engineer also provides the grant administration services. As a result, the local government must be actively involved in the project in order to account for all funds, review the consultants work, and sign off on invoices from the consultant.

**Once you have decided on who will be administering your TSEP grant and other components of the project, local officials, along with the designated individuals involved in the project, should meet to ensure that all parties involved understand their individual roles and responsibilities.** The meeting is an opportunity to outline operating procedures, the management system, and reporting requirements. The various tasks should be identified, along with who will be responsible for completing them. The participants should be clear about who will be responsible for each of the administrative tasks including preparing and submitting performance reports, scheduling work, conducting site inspections, monitoring contractors and interviewing workers for labor standards requirements, requesting funds, etc. The meeting will help identify any gaps in your management plan that you may have to address before you begin to implement your local project. You should also make sure that each person involved in the plan has a copy of the task assignments and implementation schedule. In the event of staff turnovers, the

plan will help familiarize new staff with the responsibilities and operating procedures required to handle project administration.

**Once the management plan is final, the governing body is required to sign the plan and submit it to MDOC. The management plan must be approved by MDOC in order to meet start-up requirements. The approved management plan should be retained in your project management file.**

### 3. Obtaining the Firm Commitment of Non-TSEP Funding

It is MDOC's responsibility to ensure that matching funds are committed for a project before TSEP funding is provided. This is to prevent a situation where a project is started but cannot be finished or payment to contractors is delayed because the local government's matching funds are not firmly committed. As a result, the TSEP recipient must provide evidence of the "firm commitment" of all non-TSEP public or private sector funding involved in the TSEP project.

At any time that a local government has all matching funds committed to the project, TSEP funds would be provided for all eligible project expenses incurred by the local government. However, prior to having all matching funds committed to the project, a two-step approach can also be used to obtain TSEP funds:

**Step 1** - Upon receiving the specific documentation (which is determined by the type of matching funds), TSEP funds will be provided to local governments for eligible project expenses as they are incurred (such as project administration, land acquisition, and final engineering), except for actual construction expenses. A limited "Notice to Proceed" will be issued by MDOC, which will state what the TSEP funds can be used for.

**Step 2** - Once all matching funds are committed to the project, MDOC will issue a "Notice to Proceed," and TSEP will provide funding for all eligible project expenses as they are incurred, including construction expenses. MDOC will make the final determination of whether matching funds represent a bona fide firm commitment and are available for the project.

**The TSEP recipient must provide evidence of the firm commitment of all non-TSEP funding in order to meet start-up requirements.** The local government must provide written documentation in accordance with the guidelines on firm commitment of non-TSEP funding as explained in Exhibit 1-E.

If the TSEP recipient changes one of its sources of funding, or if the cost of the project increases substantially, after obtaining the firm commitment of non-TSEP funds, and additional funding is required from existing or new sources, MDOC may at its discretion withdraw the "Notice to Proceed," thereby suspending distribution of TSEP funds until there is once again a firm commitment of funds for the project.

In some cases, the funding from a particular source may be split between two or more fiscal years, and the project is split into components and multiple phases by the funding source. Because there is not a firm commitment of funds from the other funding source until the last phase, TSEP funds will not be released for the project until the final phase. However, if the funding agency can provide a reasonable assurance that the project will be completely funded within a reasonable amount of time, MDOC at its discretion will consider providing TSEP funds in the same proportion as is being provided by the other funding agency.

#### 4. Complying With Auditing and Reporting Requirements

The TSEP recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503, MCA, and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles (GAAP). Tribal governments must comply with auditing and reporting requirements provided for in OMB Circular A-133 instead of 2-7-503, MCA.

In order to ensure compliance, MDOC relies upon the Local Government Services Bureau (telephone number 841-2909), which is part of the Department of Administration, to confirm that the TSEP recipient appears to be in compliance. The Local Government Services Bureau is also available at no charge to the TSEP recipient to help set up an accounting system. The Local Government Services Bureau will not call upon a local government to help it with accounting problems or to confirm that the TSEP recipient appears to be in compliance with GAAP unless requested by the local government. **As a result, the local government will be required to request an on-site visit unless the Local Government Services Bureau can confirm by telephone that the local government appears to be in compliance with GAAP requirements without an on-site visit.**

For new water, wastewater and solid waste districts with no existing accounting system, the TSEP recipient will initially be required to set up an accounting system that can account for revenues and expenditures related to the project. However, before the TSEP recipient can conditionally closeout the project, the remainder of the accounting system must be set up in order to account for the on-going operational needs of the system.

## 5. Complying with Special Project Conditions

Some TSEP grant awards may be subject to additional conditions, as approved by the Legislature. These additional requirements may have to be complied with in order to complete the start-up requirements.

An example of a special condition would be the adoption of an "Interlocal Agreement" in order to manage TSEP funds by a local government other than the one that applied for the TSEP funding. (See the Model Interlocal Agreement, Exhibit 1-D).

## 6. Completing Signature and Depository Forms

While the completion of these forms is not a start-up requirement, these forms must be completed and submitted to MDOC to establish the mechanisms for requesting and receiving TSEP funds (usually referred to as a "drawdown" or "draw" of funds) before any TSEP funds can be released.

The Signature Certification Form (Exhibit 1-F) authorizes several local officials to sign requests for payment. At least two officials must sign each drawdown request.

The Designation of Depository form (Exhibit 1-G) provides that the payment for a grant or a loan will be sent directly to the local government's designated bank account. The Designation of Depository must indicate the name and/or number of an account (general depository) to which MDOC will authorize the direct deposit of TSEP funds.

One original copy of each form (Exhibits 1-F and 1-G) must be completed by the TSEP recipient. Mail the original to your TSEP liaison and retain a copy in your Financial Management File. If the TSEP recipient ever needs to change the authorized signatories or depository, new forms must be submitted to MDOC.

The procedures for processing a drawdown of TSEP funds are described in Chapter 4, Financial Management.

## 7. Establishing Project Files

While the establishment of project files is also not a start-up requirement, **keeping complete and detailed records is crucial to the successful management of a TSEP project.** You should maintain detailed records of day-to-day project activities.

This includes making and filing notes for all telephone or personal conversations regarding the project with the name of the person, time, date, and a summary of the conversation. Exhibit H contains a sample "Contact Sheet" that you can copy and use for keeping a record of telephone or personal conversations regarding the project.

This section provides a general outline of a suggested file system for project records that will meet MDOC monitoring requirements. By establishing and continuously updating the project files, the grant administrator will gather and organize all the information needed to assure effective management as well as to document compliance with State requirements. Most grant administrators find that an alphabetical order for file names makes information filing and retrieval easiest. File contents should be organized with the most recent material on top. Most managers also find it helpful to bind the contents of each file so that the order of the contents cannot be easily disturbed. (Many of the specific file entries will be discussed in the remaining sections of the manual as they relate to specific TSEP project activities and compliance with state requirements.) **When a project is funded by multiple funding agencies, it is not necessary to have multiple files on the same topic.**

**Original and complete documentation for all files must be retained in the official offices of the local governing body and be available during normal business hours for your TSEP liaison and the public to review them.** Grant administrators may have copies of key documents at a separate location, if more convenient, but the main files with the original documents must be maintained in the official offices of the local governing body.

Most projects will not require every file described below. The appropriate files for your project will vary depending on the type of project and activities involved in it. Those files with an asterisk (\*) are TSEP-specific files. All others would be considered general files and only one file for each category should be needed to satisfy the requirements of all funding sources. The files below are listed in alphabetical order for ease of reference.

a. Application File\*

The application file should contain a copy of the TSEP recipient's original TSEP application as submitted to MDOC, all supporting documentation including the publication notices for and records of the required public hearing or other documentation used to prepare the application or any correspondence related to the application.

b. Acquisition/Relocation File

This file contains a copy of records on any property or equipment acquired with TSEP funds.

c. Audit File

This file should contain copies of any audit published for the TSEP recipient which includes any time period during which TSEP funds were expended, as well as copies of any local government comments prepared in response to any audit findings.

d. Citizen Participation

This file will contain copies of public notices, hearings, and press releases or announcements, newspaper articles, council or commission minutes, citizen comments or complaints (with the TSEP recipient's responses to them), and summaries of meetings related to the TSEP project. Records of any other efforts to provide information to the public or increase public awareness of the project, such as photographs of any project sign erected near project activities, should be included in the file.

e. Consultant/Employee Selection File

If the project will be administered by public employees, any required hiring records must be maintained in this file. If the local project will be administered through a contractual arrangement for professional services, this file should contain records of the procedures followed in the solicitation for services and a copy of the agreement between the community and the consultant. Some projects may involve both. Chapter 3, Procurement Requirements, provides additional guidance with respect to required data and documentation.

f. Contract File\*

This file should contain the executed copy of the TSEP contract between the TSEP recipient and MDOC including all general terms and conditions, specific conditions, and attachments. In addition, any related correspondence, telephone notes, or subsequent amendments to the contract must be retained in this file.

g. Environmental File

This file should contain all data and documentation prepared in response to

any applicable environmental requirements including all notices, public comments, environmental assessment, analysis or permits required by a state or federal agency.

#### h. Financial Management File

Sub files may be useful to keep separate those documents specific to each funding source such as request for funds forms, progress reports and other agency specific forms. A complete record of all financial transactions concerning the grant must be maintained. This file should include up-to-date financial information regarding the status of TSEP and other funds involved in the project. While the official and detailed financial records, including all original source documentation, such as original invoices or claims, for expenditures, must be maintained by the local government's financial office, the grant administrator may wish to duplicate key information such as MDOC request for funds forms, or copies of claims and invoices. It is important that the grant administrator and the TSEP recipient's financial officer work together to monitor project finances. The financial management file maintained by the grant administrator usually consists of several documents, including:

- copies of the Signature Certification and Designation of Depository forms; and
- copies of the Request for Funds Form (Exhibit 4-B in Chapter 4), along with the Project Progress Report and any other information submitted to MDOC with the drawdown request. (The grant administrator may also want to file copies of the original source documentation for any major expenditures to be reimbursed by the drawdown, since this information is generally reviewed when the TSEP recipient is monitored by the TSEP liaison.)

If TSEP funds will be used for personnel expenses, the grant administrator must also keep copies of payroll records for local staff administering the TSEP project, including hourly time and attendance records and brief logs summarizing project activities performed.

Chapter 4 includes a detailed discussion regarding financial record keeping requirements.

#### i. General Correspondence

This file should contain all general written correspondence and notes related to any telephone conversations regarding the project which are not more

appropriate to one of the other topic files.

j. Labor Requirements File

This file will contain all documentation related to TSEP recipient compliance with applicable State labor requirements. Chapter 6, Labor Requirements, includes a detailed discussion of labor standards record keeping requirements.

k. Monitoring File

Sub files may be useful to keep separate those documents specific to each funding source. Periodically, MDOC staff will make monitoring visits to assure that TSEP funds are being used properly and that the projects are being administered in conformance with state law. All written correspondence and telephone notes regarding monitoring of the grant by MDOC or any other agency should be retained in this file. It is especially important to include all monitoring letters from MDOC along with any responses to those letters from the chief elected official or others.

l. Project Closeout File\*

Chapter 11, Project Closeout, includes a description of the information required for the project closeout process. The closeout file should include a copy of the TSEP recipient's preliminary and final closeout reports, any correspondence to or from MDOC regarding closeout, and a copy of the audit or audits covering the term of the TSEP project.

m. Project Management File

Sub files may be useful to keep separate those documents specific to each funding source. The project management file should include the following:

- (1) A copy of the project management plan, including the most current approved implementation schedule, as well as copies of any notes, memorandums, or correspondence regarding project management which are not more appropriate to the specific topic files. Copies of the project progress reports which are submitted to MDOC as attachments to the "Request for Funds Report" form when drawdowns are made are usually retained with the TSEP recipient's copy of the drawdown form in the Financial Management File.

- (2) Copies of any correspondence, telephone notes, or other documentation relating to any inquiry concerning potential conflicts of interest or requests to MDOC for any determination concerning a conflict of interest.
- (3) Copies of any special memoranda or directives from MDOC or any other agency pertaining to issues of policy or procedure which would affect administration of the project. MDOC may periodically distribute updates regarding new developments in state statutes or regulations that may have an impact on your project. These should be retained in this file for reference. You may also want to include copies of any local policies or procedures pertinent to the TSEP project.
- (4) Copies of any legal opinions or recommendations from the TSEP recipient's attorney or from MDOC that are relevant to the project. Records of any other contacts regarding legal issues should also be kept in the file.

n. Public Facilities Contracts File

For each construction contract, a separate subfile should be established which contains the request for bids, certified copies of legal advertisements, bid documents, contract documents, minutes of the preconstruction conference, and all other related materials. A detailed discussion of required documentation is included in Chapter 8, Public Facilities Construction Management.

## CHECKLIST FOR START-UP ACTIVITIES

In summary, Chapter 1 sets forth the following important steps that the TSEP recipient must undertake to start-up the grant. These steps in the start-up process can be completed concurrently.

- \_\_\_\_\_ 1. Develop the contract with MDOC (see model contract in Exhibit 1-A).
  - \_\_\_\_\_ a. coordinate with the TSEP liaison on preparation of draft contract.
  - \_\_\_\_\_ b. prepare a preliminary schedule for project implementation and budget and submit to MDOC.
  - \_\_\_\_\_ c. obtain a local review of the draft contract by the city, town, or county attorney.
  - \_\_\_\_\_ d. sign final contract and return to MDOC (all three copies).
- \_\_\_\_\_ 2. Establish a management plan for project administration (see Exhibits 1-B and 1-C.)
  - \_\_\_\_\_ a. determine whether a public employee or a private contractor will manage the grant activities (or both).
  - \_\_\_\_\_ b. assign responsibilities to individuals for all aspects of project management, and meet with all parties to clarify the roles of each person.
  - \_\_\_\_\_ c. governing body sign project management plan.
  - \_\_\_\_\_ d. submit the project management plan to MDOC.
  - \_\_\_\_\_ e. establish and submit to MDOC an Interlocal Agreement (if it is necessary for another governmental entity to administer your TSEP funds) (see Exhibit 1-D).
- \_\_\_\_\_ 3. Secure the firm commitment of any non-TSEP resources to be involved in the project and submit to MDOC (see Exhibit 1-E).
- \_\_\_\_\_ 4. Establish that you are in compliance with the accounting, auditing and reporting requirements
  - \_\_\_\_\_ a. If you are a new county water and sewer district, you must set up an

accounting system that reasonably conforms to generally accepted accounting principles (GAAP). Help can be obtained from the Local Government Services Bureau. (telephone number 841-2909)

- \_\_\_\_\_ b. If you are unsure whether the Local Government Services Bureau (LGSB) familiar with your accounting system, you must contact the LGSB staff (telephone number 841-2909) to describe your accounting system and possibly arrange for an on-site visit if necessary. **MDOC will ask the LGSB staff to confirm that the local government appears to be in compliance with GAAP requirements.**

- \_\_\_\_\_ 5. Comply with any special conditions that were attached to the approval of the grant.

**Note: the following steps are not required in order to meet start-up requirements, but are required before submitting a drawdown of funds.**

- \_\_\_\_\_ 6. Submit a properly completed copy of the Signature Certification Form (Exhibit 1-F). (Needed prior to a drawdown of funds)
- \_\_\_\_\_ 7. Submit a properly completed copy of the Designation of Depository Form (Exhibit 1-G). (Needed prior to a drawdown of funds)
- \_\_\_\_\_ 8. Submit an adopted budget or resolution showing that the local government has properly appropriated the budgeted funds from MDOC (Exhibit 4-A). (Needed prior to a drawdown of funds)
- \_\_\_\_\_ 9. Establish project files.

## **CHAPTER 1 EXHIBITS**

- 1-A        Model TSEP Contract
- 1-B        Management Plan Contents
- 1-C        Management Plan Format
- 1-D        Sample Interlocal Agreement
- 1-E        Guidelines on Firm Commitment of Non-TSEP Funding
- 1-F        Signature Certification Form
- 1-G        Designation of Depository Form
- 1-H        Sample Contact Sheet

## EXHIBIT 1-A

### TSEP CONTRACT FOR CONSTRUCTION GRANTS

#### TREASURE STATE ENDOWMENT PROGRAM

CONTRACT #MT-TSEP-CG-03-\_\_\_\_\_

FOR \_\_\_\_\_, MONTANA, \_\_\_\_\_ PROJECT

This Contract is entered into by \_\_\_\_\_, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

#### Section 1. PURPOSE

The purpose of this Contract is to provide funding for project activities approved by the 58th Montana Legislature through House Bill 11 under the Montana Treasure State Endowment Program (TSEP) for Fiscal Years 2004 and 2005.

#### Section 2. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for TSEP assistance is incorporated into this Contract by reference and the representations made in it are binding upon the Grantee.

#### Section 3. ACCEPTANCE OF TSEP PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees that all contracts entered into by it for the completion of the activities described in Section 5 of this Contract will contain special provisions requiring contractors to comply with all applicable state requirements.
- (c) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or

any public or private agent or agency to which the grantee delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing the Program.

#### Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect when signed by all parties to the Contract and will terminate upon final project closeout by the Department. The activities to be performed by the Grantee will be completed according to the Implementation Schedule appended as Attachment A to this Contract, which by this reference is made a part of this Contract. Prior to the commencement of construction activities for the project, the Grantee will provide the Department with a final Implementation Schedule, to be designated Attachment C, which if approved in writing by the Department will become a part of this Contract and supersede Attachment A.

#### Section 5. SCOPE OF WORK

- (a) The Grantee will engage in activities as set forth in the Grantee's application for TSEP grant assistance **[and as supplemented with additional information dated \_\_\_\_]** which by this reference **[is] [are]** made a part of this Contract. The major components of the project include: \_\_\_\_\_, **[insert if required: the creation and adoption of a Capital Improvements Plan that covers a period of at least five years]** and the administration of this Contract.
- (b) The project will be constructed as described in engineering plans and specifications submitted by the Grantee **[and approved by the Montana Department of Environmental Quality]**.
- (c) In order to meet the expectation that the average residential **[water] [wastewater] [combined water and wastewater] [solid waste]** user rates will be at or above the Grantee's target rate as proposed in the TSEP application submitted by the Grantee, the Grantee will maintain average residential **[water] [wastewater] [combined water and wastewater] [solid waste]** user rates upon the completion of the project that are no lower than \$\_\_\_\_/month for residential users.

#### Section 6. BUDGET

- (a) A copy of the Preliminary Project Budget is included as Attachment B to this Contract, and by this reference is made a part of this Contract and binding upon the Grantee. After it receives construction bids on all approved activities, the Grantee will provide the Department with a Final Project Budget to be designated

Attachment D, which if approved in writing by the Department will become a part of this Contract and supersede Attachment B.

- (b) Budget adjustments must be approved by the Department. For adjustments between line items of the TSEP portion of Attachment B, in an amount not to exceed \$5,000, Department approval of the Request for Payment form will constitute approval of the budget adjustment. The Grantee will describe in the Project Progress Report the rationale for a budget adjustment and the adjustments must be noted in the Request for Funds Report. For a budget adjustment exceeding \$5,000. A written request must be submitted to and approved by the Department in writing before the Grantee may submit a request to draw the increased amount.

## Section 7. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- (a) The Department will use funds from the Treasure State Endowment Special Revenue Account as authorized by 17-5-703 and 90-6-701 through 90-6-710, MCA, and appropriated by the 58th Legislature in House Bill 11. The Grantee acknowledges that its access to TSEP funds is subject to their availability. While TSEP funds normally should be available when the Grantee meets its start-up requirements as described in Section 8, there may be times when TSEP revenues are insufficient to fund all projects that are ready to proceed. In these cases, grant funds will be released in the order of project priority approved by the 58th Legislature in House Bill 11.
- (b) The Grantee acknowledges that it is subject to the conditions on grant award, disbursement of funds, and other TSEP policies as established by the 58th Legislature in House Bill 11.
- (c) The Department agrees that, if and when coal tax revenues are available, it will reimburse the Grantee for successfully completing the activities set forth in Section 5. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds the Department will reimburse all eligible expenses as provided in this Contract. The Department will authorize the Grantee to draw up to \$\_\_\_\_\_ against the TSEP funding appropriated for the Grantee's project by the 58th Legislature. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (d) The Department will reimburse the Grantee for approved eligible expenses according to the documentation submitted by the Grantee to support the expenditures. The Department will not reimburse the Grantee for any expenses not included in the approved budget and not clearly and accurately supported by the

Grantee's records. Any authorized funds not expended under this grant will revert to the Department and will be used to finance other authorized TSEP projects.

- (e) Reimbursement of eligible costs is contingent upon the Grantee's satisfaction of the "Project Start-Up Requirements" described in Section 8. If the Grantee is unable to comply with the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.
- (f) The Grantee may, at its discretion, incur eligible costs in furtherance of the project before the Department has issued a "Notice to Proceed" notifying the Grantee that TSEP funding has been secured and will be available; however, any costs incurred before the "Notice to Proceed" is issued will be the Grantee's sole responsibility if TSEP revenues fall short of projections or if the Grantee is unable to comply with the terms and conditions of this Contract.
- (g) If the Grantee changes one of its sources of funding, or if the cost of the project increases, after the Grantee has obtained the firm commitment of non-TSEP funds, and so that additional funding is required from existing or new sources, the Department may, at its discretion, withdraw the "Notice to Proceed," thereby suspending distribution of TSEP funds until once again there is a firm commitment of funds for the project.
- (h) ***(Insert for Grantees that are guaranteed funding.)*** The Grantee understands that if it has not completed the "Project Start-Up Requirements" by the end of the biennium in which the Grantee's grant funds are authorized, the Grantee loses its guarantee of receiving the authorized grant, and will be provided funds only as long as funding is available. If the Grantee does complete the "Project Start-Up Requirements" before the end of the biennium, it will be provided funds from the next biennium as soon as funds become available.  
  
***(Insert for Grantees that are not guaranteed funding.)*** The Grantee understands that it will receive TSEP funds under this contract only if additional TSEP revenues, beyond what was projected to be received during the 2005 biennium, become available. Any additional TSEP funds that become available will be provided to the Grantee according to its ranking as approved by the 58th Legislature, if it has completed the "Project Start-Up Requirements". If the Grantee is not funded under this Contract during the 2005 biennium, it will have to re-apply to the program if it still requires TSEP funding.
- (i) The Grantee understands that if it has not completed the "Project Start-Up Requirements" within 18 months of the beginning of the biennium in which the Grantee's grant funds are authorized, the Department will refer the project back to the next session of the Legislature for its consideration of whether to withdraw the funding for the project. Furthermore, if the Department determines that the Grantee

has failed to commence or complete its project in a timely manner, the Department will refer the project back to the next session of the Legislature for its consideration of whether any remaining funds should be re-allocated to other TSEP projects.

- (j) Until all tasks outlined in Section 5. SCOPE OF WORK are completed and approved by the Department, the Department will hold two percent (2%) of the total authorized grant amount as surety. Within 90 days after the Certificate of Substantial Completion being issued, the Grantee will prepare and submit to the Department a Project Completion Report in the form prescribed by the Department. The Department will disburse the retainage upon receipt and approval of the Grantee's Project Completion Report. If the Grantee fails to submit a Project Completion Report within the 90 days, the Department will refer the project back to the next session of the Legislature for its consideration of whether these remaining funds should be re-allocated to other TSEP projects.
- (k) If the actual total cost of completing the project is less than was projected by the Grantee in the Preliminary Project Budget (Attachment B), the Department may, at its discretion, reduce the amount of TSEP funds to be provided under this Contract in proportion to the overall savings. If actual construction bids are less than the estimates included in the Preliminary Project Budget, the construction portion of the budget in the Final Project Budget must be established at no more than the bid price. Any savings will be added to the amount budgeted for contingencies under the contingency line item.
- (l) If actual project expenses are lower than the projected expense of the project as presented in the TSEP Application, the Department may, at its discretion, reduce the amount of TSEP grant funds so that the projected average residential user rate does not fall lower than the target rate.
- (m) The difference between actual project costs and the original grant award, or any reduction in the funds provided as discussed in subsection (k), may, at the Department's discretion, be used either to fund other TSEP projects authorized by the 58th Legislature, or to fund activities not originally proposed in the Grantee's TSEP Application as long as those activities are reasonably related to the original project.
- (n) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.

## Section 8. PROJECT START-UP REQUIREMENTS

The Department will not reimburse the Grantee for any activities provided for by this Contract until:

- (a) The Grantee submits to the Department evidence of the firm commitment of the other funding necessary for the completion of the project as described in Section 5 and Attachment B.
- (b) The Grantee submits to the Department an acceptable Project Management Plan.
- (c) The Department confirms that the Grantee:
  - (i) has established a financial accounting system that conforms to generally accepted accounting principles (GAAP), and
  - (ii) is in compliance with the auditing and reporting requirements provided for in 2-7-503, MCA. (***Substitute the following for contracts with Tribal governments.***) is in compliance with auditing and reporting requirements provided for in OMB Circular A-133.
- (d) The Grantee complies with any special conditions recommended by the Department and approved by the 58th Legislature.
- (e) The Department issues a Notice to Proceed.

## Section 9. PROJECT PROGRESS REPORTING

- (a) During the term of the Contract, the Grantee will submit quarterly project progress reports to the Department for the periods ending March, June, September, and December. These reports will describe the status of each project implementation objective including, at a minimum, the percentage complete, costs incurred, funds remaining, and projected completion date. In these reports the Grantee will note any significant problems encountered in carrying out the project and any modifications the Grantee is requesting in the scope of the project or the project implementation schedule.
- (b) The Grantee will submit its project progress reports to the Department within 15 days of the close of each quarter. The Department, at its discretion, may decline to honor any claim for payment if the required quarterly report has not been approved or if a quarterly report is delinquent. Project Progress Reports submitted during a quarter, in conjunction with a Request for Payment, will satisfy the quarterly progress reporting requirement.

## Section 10. LIAISON

\_\_\_\_\_, TSEP Program Specialist, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. \_\_\_\_\_, \_\_\_\_\_, is the Grantee's liaison with the Department.

## Section 11. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in \_\_\_\_\_, Montana.
- (b) The Grantee will retain all of the project related records for three years after the final closeout of the TSEP grant.
- (b) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

## Section 12. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Agreement will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

## Section 13. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

***(Substitute the following for contracts with Tribal governments.)*** The Grantee agrees that none of its employees, officers or agents will participate in the selection of a contractor

to perform work under this Contract or in the award or administration of a contract to be funded under this Contract if a conflict of interest, real or apparent, would arise. A prohibited conflict would arise if:

- (a) The employee, officer, or agent,
- (b) Any member of his or her immediate family,
- (c) His or her partner, or
- (d) An organization that employs, or is about to employ, any of the persons described above,

has a financial or other interest in the firm selected for award.

In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

#### Section 14. PROPERTY MANAGEMENT AND EQUIPMENT

Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or subgrantee respectively.

#### Section 15. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

#### Section 16. MODIFICATION AND ASSIGNABILITY OF CONTRACT

This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this Contract, are valid or binding. This Contract may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the State of Montana beyond the termination date noted herein.

The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

#### Section 17. INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipients' performance under this Contract.
- (b) Further, the Grantee will indemnify, hold harmless, and defend the Department and the State of Montana against any and all claims, demands, damages, costs, expenses, or liability arising out of the Grantee's or any subrecipients' performance of this Contract. In the event the Department or the State of Montana is named as a codefendant in any action relating to activities to be performed by the Grantee or subrecipient under this Contract, the Grantee will notify the Department of such fact and will represent the Department in the legal action unless the Department undertakes to represent itself as a codefendant in the legal action in which case the Department will bear its own litigation costs, expenses, and attorneys' fees.

#### Section 18. CONTRACT AMENDMENT

- (a) The Department will consider requests by the Grantee to amend this Contract. However, before the Department will approve an amendment, the Grantee must clearly demonstrate that the modification is justified and will enhance the overall impact of the original project.
- (b) If it determines that the proposed amendment represents a substantial change in the project activities proposed in the original application for TSEP funds, the Department may, at its discretion, require the Grantee to hold a local public hearing on the amendment after giving reasonable notice of the hearing.
- (c) The Department will not approve significant amendments to the scope of work or budget that would materially alter the intent and circumstances under which the application was originally ranked by the Department and approved by the Governor and the 58th Legislature.
- (d) The Grantee understands that if it makes a significant change in the scope of work or budget that would materially alter the intent and circumstances under which the application was originally ranked by the Department and approved by the Governor and the 58th Legislature, TSEP funding may be suspended until the next session of

the Legislature when the proposed change would be presented to the Legislature for its review and approval or disapproval.

## Section 19. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) **Termination Due to Loss of Funding.** The Grantee understands that TSEP funds are provided by mineral taxes and that a decline in revenues produced by these taxes may preclude funding this Contract in whole or in part. If revenues do decline, the parties agree that the Department may terminate this Contract, and, if sufficient TSEP funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Department will notify the Grantee of the effective date of a termination or, if a reduction in funding is required, the change in funding and changes in the approved budget.
- (b) **Termination Due to Noncompliance with Contract Terms.** If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (c) **Termination Due to Adverse Environmental Impact.** This Contract may be terminated if the Grantee or the Department determines that the project would have a significant adverse impact on the quality of the human environment and that this impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.
- (d) **Effect of Termination.** In the event of termination due to the Grantee's failure to comply with the terms of this Contract or the project's adverse environmental impact, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

Section 20. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

***(Substitute the following for contracts with Tribal governments.)***

- (a) In the event that a dispute or claim arises under this Contract, the laws of the State of Montana will govern as to the interpretation and performance of this Contract, and any judicial proceeding concerning the terms of this Contract will be brought in the District Court of the First Judicial District of the State of Montana;
- (b) The Grantee's Tribal government waives the Tribes immunity from suit in State court on any issue specifically arising from this Contract; and
- (c) The Grantee's Tribal government waives any right it may have with respect to this Contract to exhaust tribal remedies.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

\_\_\_\_\_ (Grantee)      Department of Commerce

\_\_\_\_\_  
(Chief Elected Official)

\_\_\_\_\_  
(Name), Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A**

**IMPROVEMENTS  
QUARTERLY PROJECT IMPLEMENTATION SCHEDULE**

TASK	QUARTERS, 20__				QUARTERS, 20__			
	1st J F M	2nd A M J	3rd J A S	4th O N D	1st J F M	2nd A M J	3rd J A S	4th O N D
<b><u>PROJECT START UP</u></b>								
Attend Grant Admin. Workshop								
Sign TSEP Contract								
Prepare Management Plan								
Establish Project Files								
Submit Signature & Depository Forms								
Submit Budgetary Resolution								
<b><u>PROJECT DESIGN</u></b>								
Advertise for & Select Engineer								
Commence Final Design								
Complete Project Design								
Submit Plans to DEQ								
Prepare Bid Documents								
Finalize Acquisition								
<b><u>ADVERTISEMENT FOR CONST. BID</u></b>								
Review Contract Requirements								
Public Bid Advertisement								
Open Bids & Examine Proposals								
Request Contr. Debarment Review								
Select Contractor & Award Bid								
Conduct Pre-Const. Conference								
Issue Notice to Proceed to Contractor								
<b><u>PROJECT CONSTRUCTION</u></b>								
Begin Construction								
Monitor Engineer & Contractor								
Conduct Labor Compliance Reviews								
Hold Const. Progress Meetings								
Final Inspection								
<b><u>PROJECT CLOSE OUT</u></b>								
Submit Final Drawdown								
Determine Audit Requirements								
Project Completion Report								
Submit Conditional Certification								
Submit Final Certification								

# ATTACHMENT B – BUDGET FORM FOR MONTANA PUBLIC FACILITY PROJECTS (DATE: \_\_\_\_\_ )

ADMINISTRATION:	SOURCE:	SOURCE:	SOURCE:	SOURCE:	SOURCE:	SOURCE:	SOURCE:	TOTAL
1. PERSONNEL COSTS								
2. OFFICE COSTS								
3. PROFESSIONAL SERVICES								
4. LEGAL COSTS								
5. AUDIT FEES								
6. TRAVEL & TRAINING								
7. LOAN ORIGATION FEES								
8. LOAN RESERVES								
9.								
10.								
11. TOTAL ADMINISTRATION								
CONSTRUCTION RELATED ACTIVITIES:								
12. LAND ACQUISITION								
13. PRELIMINARY ENGINEERING								
14. FINAL DESIGN ENGINEERING								
15. CONSTRUCTION INSPECTION								
16. CONSTRUCTION								
17. CONTINGENCY								
18. TOTAL ACTIVITY								
19. TOTAL PROJECT BUDGET								



## EXHIBIT 1-B

### MANAGEMENT PLAN CONTENTS

Preparation of the project management plan does not have to be a difficult task. As part of its TSEP application, each applicant prepared a preliminary management plan that described how it intended to manage its project. Preparation of the final plan is a matter of reviewing the preliminary plan and more precisely defining how and by whom the project will be administered. The management plan should cover the following three basic areas.

#### 1. Overall Administrative Structure

This section of the plan should describe how your local government will integrate project management with its existing organizational structure. The most common alternatives for management (as discussed in the text of Chapter 1) are either administration by local staff or through a contract with a private consultant. This portion of the plan should include a description of:

- the role of the mayor and council (or county commission) in supervising project administration and the expenditure of project funds and how this will be coordinated with the grant manager and the recipient's financial officer;

- the role, if any, of the local government's attorney in preparing and reviewing any proposed contracts required for the TSEP project;

- the key persons who will be involved in project administration including the chief elected official, the local government's financial officer, any officials who will be authorized to sign requests for TSEP funds, the grant manager, the recipient's attorney, and any other officials or staff who will have a direct role in administering the grant. The list should include names, titles, telephone numbers, and a brief description of their role in the project's administration.

#### 2. Grant Management

This section should describe the procedures to be followed and the persons who will be responsible for overall grant management including assuring documentation of the recipient's compliance with all applicable requirements (other than those pertaining to financial management) such as preparation of progress and closeout reports. This section should also describe the roles and responsibilities of the engineer and local staff (or management consultant) for compliance with general requirements, preparation of bid specifications and supervising bidding procedures, conducting preconstruction conferences, determining prevailing wage rates and conducting on-site interviews with construction personnel for wage compliance, and project inspections.

If the TSEP recipient intends to contract with a consultant for grant management services a copy of the draft contract should be attached to the management plan.

### 3. Financial Management

This section of the plan should describe the procedures to be used and the officials or staff that will be responsible for assuring proper expenditure of and internal control over the use of TSEP funds. The description should:

- . address the procedures to be followed for reviewing and approving expenditures, preparing and submitting drawdown requests to MDOC, processing payments, etc.;
- . identify the persons who will be responsible for maintenance of the required financial records or processing TSEP funds;
- . explain any arrangements with financial institutions or contractors, which involve management of TSEP funds;
- . describe the accounting and management system to be used, such as the Budgetary, Accounting and Reporting System (BARS) or the Town Accounting System (TAS); and
- . include the role of the governing body in approving expenditures for the TSEP project.

## EXHIBIT 1-C

### SAMPLE MANAGEMENT PLAN FORMAT

#### I. Administrative Structure

The City of \_\_\_\_\_ is an incorporated city with a Mayor-Council form of government. The following persons will have lead responsibility for administering the City's FY \_\_\_\_ Treasure State Endowment Program (TSEP) public facilities project for water improvements:

Mayor \_\_\_\_\_, as the City's chief elected official will have responsibility for all official contacts with the Montana Department of Commerce (MDOC). The Mayor and City Council will have ultimate authority and responsibility for the management of project activities and expenditure of TSEP funds. The approval of all contracts and drawdown requests will be the responsibility of the City Council. (Telephone \_\_\_\_\_)

\_\_\_\_\_, Clerk-Treasurer, as the City's chief financial officer, will be responsible for management of, and record keeping for, the TSEP funds and other funds involved in the financing of the water project. (Telephone \_\_\_\_\_)

\_\_\_\_\_, Director of the City-County Planning Board, will be designated as Grant Manager and be responsible for overall grant management and assuring compliance with applicable federal and state requirements for the TSEP project. The Grant Manager will serve as the City's liaison with MDOC for the project. One-fourth of this position's time will be devoted to TSEP administration during the term of the project. (Telephone \_\_\_\_\_)

\_\_\_\_\_, City Attorney, as the City's legal counsel, will review and advise the Mayor and Council regarding any proposed contractual agreements associated with the TSEP project and provide any other legal guidance as requested. (Telephone \_\_\_\_\_)

\_\_\_\_\_, Project Engineer, will be responsible for construction-related activities including preparation of preliminary engineering, final design plans and specifications, as well as construction inspection. Contractor compliance, scheduling, and payment requests will also be subject to the Project Engineer's review and approval. (Telephone \_\_\_\_\_)

#### II. Grant Management

A. The Grant Manager will be responsible for:

1. Compliance with any applicable environmental requirements.
2. Developing a contract with MDOC and assisting the City with all requirements related to effective project start-up and implementation.
3. Preparing any legal notices required to be published, and processing and conducting any required public hearings or informational meetings.
4. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of the grant.
5. Assisting the City with selection of the Project Engineer, in conformance with State procurement requirements, including the preparation of requests for proposals for publication or other distribution.
6. Reviewing all proposed project expenditures or requests for payment to ensure their propriety and proper allocation of expenditures to the TSEP budget.
7. In cooperation with the Clerk-Treasurer, processing payment requests and preparing drawdown requests to MDOC, including the Request for Payment and Status of Funds Report and the Project Progress Report.
8. Monitoring the contractor selection process, including the bid advertising, tabulation and award process for conformance to TSEP requirements. The manager will review the construction contract provisions for TSEP compliance.
9. Attending the preconstruction conference and monthly construction progress meetings.
10. Monitoring contractor compliance with applicable requirements.

11. Assuring compliance with all state labor standards requirements. Responsibilities will include the review of weekly payroll reports to assure compliance with state prevailing wage requirements; periodic visits to the construction site to assure that required equal opportunity, labor standards, and prevailing wage determinations have been posted; and conducting on-site interviews with construction personnel to assure prevailing wage compliance.
  12. Assuring compliance with applicable equal opportunity requirements.
  13. Preparing all required performance reports and project closeout documents for submittal to MDOC and assist the City with the selection of an independent auditor.
  14. Attending City Council meetings to provide project status reports and representing the TSEP project at any other public meetings, as deemed necessary by the Mayor.
- B. The Project Engineer will be responsible for:
1. Design and construction engineering.
  2. Preparation of the construction bid package in conformance with applicable TSEP requirements and supervision of the bid advertising, tabulation, and award process, including the preparation of the advertisements for bid solicitation, conducting the bid opening, and issuance of the notice to proceed.
  3. Conducting the preconstruction conference, with the assistance of the grant manager.
  4. Supervision of construction work and preparation of inspection reports.
  5. Reviewing and approving all contractor requests for payment and submitting the approved requests to the City.

### III. Financial Management

- A. The Clerk-Treasurer's financial responsibilities will be as follows:
1. Managing the transfer of TSEP funds from MDOC to the town's bank account and disbursing TSEP funds based on claims and supporting

documents approved by the grant manager, project engineer, and contractor.

2. Entering all project transactions into the City's existing accounting system (BARS), and preparing checks/warrants for approved expenditures.
  3. With the assistance of the Grant Manager, preparing the Request for Payment and Status of Funds Reports to be submitted to MDOC. All drawdown requests will be signed by two of the three following persons: Mayor, Clerk-Treasurer, and Council President. No expenditures will be made without the approval of the Council at a regular meeting.
  4. With the assistance of the Grant Manager, preparing the final financial reports for project closeout.
- B. The Grant Manager and Clerk-Treasurer will review all proposed expenditures of TSEP funds and will prepare drawdown requests, which will be signed by the officials cited above. All disbursements will be handled in accordance with the City's established claim review procedures. Before submitting the claim to the Clerk-Treasurer, the Grant Manager will attach a certification to each claim stating that the proposed expenditure is an eligible expense of the City's TSEP project and consistent with the project budget. The Council will review all claims before approving them.
- C. Financial record keeping will be done in conformance with the recommendations of the Montana Department of Administration's Local Government Services Bureau as described in Chapter 4 of the TSEP Administration Manual. The original financial documents (claims with attached supporting material) will be retained in the City's offices.
- D. Hourly timesheets will be maintained by the Grant Manager and the Clerk-Treasurer to document all time worked on the TSEP project that will be compensated with TSEP funds.

This management plan has been approved by the City of \_\_\_\_\_ and the individuals named within have been informed of the responsibilities stated within this plan.

Mayor

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_



## EXHIBIT 1-D

### SAMPLE INTERLOCAL AGREEMENT

THIS CONTRACT is entered into by (Insert Name of County) County, herein referred to as "the County", and the (Insert Name of District) District, herein referred to as "the District".

WITNESSETH THAT:

WHEREAS, the County is the recipient of a Treasure State Endowment Program (TSEP) grant to (Describe the Project) owned and operated by the District; and

WHEREAS, this Contract between the County and the District will enable them to enhance cooperation in implementing the County's TSEP award to accomplish the above-described project; and

WHEREAS, the County, in its capacity as a TSEP grantee, has determined that the District can better supervise the design and construction phases of the (water and/or sewer) system; and

WHEREAS, the Montana Department of Commerce (MDOC) has required the County to enter into a contract with the District specifying the terms and conditions of the County's delegation of certain TSEP grant management responsibilities to the District; and

WHEREAS, both parties to this Contract understand that neither local government involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this Contract does not create any new organization or legal entity.

NOW, THEREFORE, THE COUNTY AND THE DISTRICT MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the District

- A. The District will, subject to prior approval by the Board of County Commissioners, retain the services of a consulting engineering firm to design and supervise the construction of the project.
- B. The District will be responsible for all facets of the design and construction phases of the project, including the following:
  - 1. Design engineering;
  - 2. Construction engineering;

3. Except as provided by paragraph IV. Administration below, compliance with all applicable state and federal requirements;
  4. Except as provided by paragraph IV. Administration below, compliance with all other state and federal requirements as described in the MDOC TSEP Project Administration Manual;
  5. Preparation of construction bid documents; and
  6. Supervision of the bid process, the awarding of construction contracts, and construction of the project. The selection of the project contractor will be subject to the ratification of the County Board of Commissioners and bid solicitation documents will reflect this requirement.
- C. The District and its consulting engineer will receive, review, and approve all requests for payment for the items contained in paragraph B, above, and prepare and submit such requests to the County Board of Commissioners in a timely fashion in accordance with established procedures.
- D. During the term of this Contract, the District will maintain reasonable records of its performance hereunder in a manner consistent with generally accepted accounting principles. The District will allow the County and MDOC and their authorized representatives access to these records at any time during normal business hours. At the request of the County, the District will submit to the County, in the format prescribed by the County, status reports on its performance under this Contract.
- E. The District will provide documentation that the local share of the project that exceeds TSEP funds may be accessed by the County for the project no later than the time of construction bid award.

## II. Payment of Design and Construction Costs Incurred by the District

In consideration of the District's acceptance of the responsibilities described in paragraph I, above, the County agrees to the following:

- A. Upon receipt of a valid claim for payment from the District for allowable project costs as specified in the County's contract with MDOC, a copy of which is appended as Attachment A of this Contract, and which by this reference is made a part hereof, the County will request the required amount of TSEP funds from MDOC and upon receipt of these funds, the County will

honor the District's claim and pay the engineer or contractor accordingly.

- B. Each payment for engineering and construction costs will be drawn from TSEP and District funds (if applicable) in amounts that are proportionate to the percentage that such funds represent of the total cost of the project as specified in Attachment B of Attachment A.
- C. The County will deduct a retainage from each payment request equal to five (or ten) percent of the request, submitted by the District for construction costs incurred by the project contractor and hold this retainage until construction is completed, the engineer approves final payment, and the project is accepted, all in accordance with the conditions of the construction contract. (Note: A retainage requirement is optional.)
- D. The County will also withhold one percent of the amount of any claim submitted by the contractor and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.
- E. The County may refuse to pay any claim which it deems not valid under the terms of the TSEP contract with MDOC (Attachment A). Any agreement between a TSEP recipient and a subrecipient, such as a water or sewer district, should include a "Scope of Work" which includes a description of the work to be performed, a schedule for completing the work, and a budget. These items are standard components of any TSEP grant agreement which is referred to here as an attachment.)

### III. Duration of the Contract

- A. This Contract takes effect when the following conditions are satisfied:
  - 1. MDOC and the County Board of Commissioners have executed the TSEP contract;
  - 2. MDOC has issued a "Notice to Proceed";
  - 3. The County Attorney and the attorney for the District have approved this Contract as to form and content; and
  - 4. The County Board of Commissioners and the District's governing body have each reviewed this Contract and agreed fully to its terms and conditions.
- B. This Contract will terminate 90 days after the project engineer files a certificate of completion of the project with the Montana Department of

Health and Environmental Sciences or MDOC closes out the TSEP project with the County, whichever occurs later.

#### IV. Administration

For purposes of implementing the joint undertaking established by this Contract, the County's Board of Commissioners and the District's Board of Directors hereby agree to form a project coordinating committee consisting of the County's TSEP contract liaison, the project engineer, and a designated representative of the district to meet on a regular basis during the term of the TSEP project to provide for the efficient and effective implementation of this Contract and the activities contained herein. The life of the project coordinating committee will be concurrent with the term of this Contract.

#### V. Management of Real Property or Equipment Acquired

The primary purpose of this Contract is to allow the County to delegate responsibility for the design and construction of the District's project to the District and to define the procedures by which the County will disburse CDBG funds to pay the costs incurred as a result of these activities. The District's facilities will be constructed or improved as described in the TSEP contract with MDOC (Attachment A) and the District will continue to own and operate those facilities subject to the limitations contained in subparagraph B.

Upon the expiration of this Contract the District will transfer to the County any TSEP funds on hand at the time of expiration and any accounts receivable attributable to the use of TSEP funds.

#### VI. Indemnification

The District waives any and all claims and recourse against the County, including the right of contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to the District's performance of this Contract except claims arising from the concurrent or sole negligence of the County or its officers, agents, or employees. The District will indemnify, hold harmless, and defend the County against any and all claims, demands, damages, costs, expenses, or liability arising out of the District's performance of this Contract except for liability arising out of the concurrent or sole negligence of the County or its officers agents, or employees.

\*VII. Suspension and Termination

The County may suspend or terminate this Contract if the District materially fails to comply with any term of the County's TSEP contract with MDOC. In addition, the County may terminate this Contract for convenience with reasonable notice.

This Contract has been approved by the County's Board of Commissioners and the District's Board of Directors.

(Name of County) Commissioners

\_\_\_\_\_  
Chairman

Date:  
\_\_\_\_\_

\_\_\_\_\_  
Commissioner

Date:  
\_\_\_\_\_

\_\_\_\_\_  
Commissioner

Date:  
\_\_\_\_\_

(Name of) District

\_\_\_\_\_  
Chairperson

Date:  
\_\_\_\_\_



## EXHIBIT 1-E

### GUIDELINES ON FIRM COMMITMENT OF NON-TSEP FUNDING

#### Purpose of Guidelines

There are several reasons why guidelines on committed funds are necessary:

- To comply with MDOC's statutory responsibility to ensure that matching funds are committed for a project before TSEP funding is provided, and subsequently to comply with the terms of the contract between MDOC and the local government.
- To prevent a situation where a project is started but cannot be finished or payment to contractors is delayed because the local government's matching funds are not firmly committed.
- To clearly identify for local governments what must be done to get their matching funds committed.

#### Procedure

**At any time that a local government has all matching funds firmly committed for the project, TSEP funds would be provided for all eligible project expenses incurred by the local government.** However, prior to having all matching funds available for the project, a two-step approach can also be used to provide TSEP funds to local governments:

**Step 1** Upon receiving specific documentation documenting a firm commitment of a project's funding (which is determined by the type of matching funds), a limited "Notice to Proceed" will be issued and MDOC will provide TSEP funds for eligible project expenses as they are incurred (such as project administration, land acquisition, and final engineering), except for actual construction expenses. The limited "Notice to Proceed" will specify what the TSEP funds can be used for.

**Step 2** Once all matching funds are actually committed for the project, a full "Notice to Proceed" will be issued and MDOC will provide TSEP funds for all eligible project expenses as they are incurred including construction expenses.

This approach provides local governments with the flexibility to plan the project, but it helps to prevent a situation where the project cannot be finished because the local government does not have all of the funds necessary to complete the project.

The process for obtaining TSEP funds is defined as follows for the different types or forms of matching funds:

## **A. Grants and Other Government Appropriated Funds**

With a letter from the funding agency stating that funding has been approved (or appropriated, when appropriate), MDOC will provide TSEP funds for all eligible project expenses as they are incurred. The letter should indicate the agency's approval of a final application for the project, and/or the existence of a signed contract between the funding agency and the local government, and indicate when funds will be available.

If the project has been split into multiple phases by the funding agency, the letter should state that a portion of the funding has been approved or authorized and the agency is committed to approving or authorizing the remainder of the funding within a reasonable amount of time. The letter should discuss the phasing of the project and the expected timetable for approving or authorizing the funding for the project. Depending on the firmness of the commitment of the other funds and the likelihood that the entire project will be completed: 1) TSEP funds may be provided in the same proportion as is being provided by the other funding agency; or 2) TSEP funds may be withheld until the final phase when all funds are firmly committed.

While some funds may be authorized they are not always completely appropriated for the entire project. MDOC will evaluate these situations for the firmness of the commitment on a case-by-case basis.

Depending on the funding source and the level of commitment that they can provide, MDOC may use the two-step approach to providing funds for the project:

**Step 1** Depending on the degree of commitment, a limited "Notice to Proceed" will be issued and MDOC will provide TSEP funds for eligible project expenses as they are incurred (such as project administration, land acquisition, and final engineering), except for actual construction expenses. The limited "Notice to Proceed" will specify what the TSEP funds can be used for.

**Step 2** Once the matching funds are fully committed so that the matching funds or an interim financing source is able to reimburse project expenses, a full "Notice to Proceed" will be issued and MDOC will provide TSEP funds for all eligible project expenses as they are incurred including construction expenses.

State and Federal funds that have been authorized, but have not yet been completely appropriated, potentially may be viewed as fully committed. These types of matching funds will be evaluated on a case-by-case basis to determine how much has been appropriated, the likelihood of the remaining funds being received, and when they would likely be received in order for the project to be completed. Depending on the firmness of the commitment: 1) all of the TSEP funds may be provided for project expenses as they are incurred, including construction; or 2) a portion of the TSEP funds may be provided (in the same proportion as is being provided by the other funding agency).

**B. Local Government Funds**

Local governments sometimes provide their match using reserve funds or their annual budgeted funds. With a budget or a budgetary authority resolution (see exhibit 4-A) approved and adopted by the governing body, specifically designating the source of funds that will be available for the TSEP project, MDOC will provide TSEP funds for all eligible project expenses as they are incurred.

At its discretion, MDOC may allow the project to be broken down into discrete phases that can be funded with local funds that are budgeted over multiple years. For example, a project involving multiple bridges; the county could build one or more bridges each year with the funds that it can appropriate within a year and complete the project over multiple years. Only a portion of the TSEP funds will be released with each phase, in proportion to the overall total amount of the project.

**C. Loans (Revenue Bonds, General Obligation Bonds, Special Improvement Districts, Rural Improvement Districts)**

**Step 1** If the conditions as described below are met, a limited “Notice to Proceed” will be issued and MDOC will provide TSEP funds for eligible project expenses as they are incurred (such as project administration, land acquisition, and final engineering), except for actual construction expenses. The limited “Notice to Proceed” will specify what the TSEP funds can be used for.

Loans to Municipalities or Counties, which require a vote by only the <u>governing body</u> (e.g. Revenue Bond)	Loans to Districts (Revenue Bonds), <u>or</u> other types of financing, for all types of local governments, which require a vote by the <u>general population or users</u> (e.g. SID, G.O. Bond)
---	--

**SRF loan**

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• “Commitment Agreement” or “Letter of Approval for State Revolving Fund Loan Program in Lieu of Commitment Agreement”, adopted by Resolution</li></ul> | <ul style="list-style-type: none"><li>• “Commitment Agreement” or “Letter of Approval for State Revolving Fund Loan Program in Lieu of Commitment Agreement”, adopted by Resolution</li><li>• Successful certified debt election results (attach supporting documents)</li></ul> |
|---|--|

**RUS loan**

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• “Letter of Conditions” from RUS</li><li>• “Letter of Intent to Meet Conditions” signed and returned to RUS<br/>FORM: RD 1942-46</li><li>• “Request for Obligation of Funds”<br/>FORM: RD 1940-1</li></ul> | <ul style="list-style-type: none"><li>• “Letter of Conditions” from RUS</li><li>• “Letter of Intent to Meet Conditions” signed and returned to RUS<br/>FORM: RD 1942-46</li><li>• “Request for Obligation of Funds”<br/>FORM: RD 1940-1</li></ul> |
|---|---|

- Successful certified debt election results (attach supporting documents)

## **Step 2**

If the conditions as described below are met, a full "Notice to Proceed" will be issued and MDOC will provide TSEP funds for all eligible project expenses as they are incurred including construction expenses.

Loans to Municipalities or Counties, which require a vote by only the governing body (e.g. Revenue Bond)

Loans to Districts (Revenue Bonds), or other types of financing, for all types of local governments, which require a vote by the general population or users (e.g. SID, G.O. Bond)

### **SRF loan**

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• "Commitment Agreement" adopted by Resolution</li> <li>• Bid Tabs to show that sufficient funds are committed to complete project</li> </ul> | <ul style="list-style-type: none"> <li>• "Commitment Agreement" adopted by Resolution</li> <li>• Successful certified debt election results (attach supporting documents)</li> <li>• Bid Tabs to show that sufficient funds are committed to complete project</li> </ul> |
|--|--|

### **RUS loan**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• "Letter of Conditions" from RUS</li> <li>• "Letter of Intent to Meet Conditions" signed and returned to RUS<br/><i>FORM: RD 1942-46</i></li> <li>• "Request for Obligation of Funds"<br/><i>FORM: RD 1940-1</i></li> <li>• Bid Tabs to show that sufficient funds are committed to complete project</li> </ul> | <ul style="list-style-type: none"> <li>• "Letter of Conditions" from RUS</li> <li>• "Letter of Intent to Meet Conditions" signed and returned to RUS<br/><i>FORM: RD 1942-46</i></li> <li>• "Request for Obligation of Funds"<br/><i>FORM: RD 1940-1</i></li> <li>• Successful certified debt election results (attach supporting documents)</li> <li>• Bid Tabs to show that sufficient funds are committed to complete project</li> </ul> |
|---|---|

If the TSEP recipient changes one of its sources of funding, or if the cost of the project increases, after obtaining the firm commitment of non-TSEP funds, and additional funding is required from existing or new sources, MDOC may at its discretion suspend the "Notice to Proceed," thereby temporarily stopping the distribution of TSEP funds until there is once again a firm commitment of funds for the project.

## EXHIBIT 1-F

### SIGNATURE CERTIFICATION FORM

Montana Department of Commerce  
Treasure State Endowment Program  
301 S. Park Avenue  
PO Box 200523  
Helena, Montana 59620-0523

This is to certify that the following officials<sup>1</sup> are authorized to sign requests for payment of Montana Treasure State Endowment Program (TSEP) funds for the (name of grantee: City, Town, or County of \_\_\_\_\_,) FY 20\_\_ TSEP grant:

- |    |                     |                |
|----|---------------------|----------------|
| 1. | _____<br>Signature  | _____<br>Title |
|    | _____<br>Typed Name |                |
| 2. | _____<br>Signature  | _____<br>Title |
|    | _____<br>Typed Name |                |
| 3. | _____<br>Signature  | _____<br>Title |
|    | _____<br>Typed Name |                |

It is understood that any two of the above signatories must sign each request for payment submitted.

<sup>2</sup>I hereby certify that I have witnessed the signing of the above named signatures.

\_\_\_\_\_  
Signature of Witness

Date: \_\_\_\_\_

\_\_\_\_\_  
Typed Name and Title of Witness

SUBSCRIBED AND SWORN TO, before me, a Notary Public for the State of Montana, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Notary Seal)

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

<sup>1</sup>Suggested signatories include the chief elected official (Mayor or Chairperson of County Commission), city or county clerk or treasurer, or other local officials. At least three officials should sign; and it is acceptable to have more to assure that at least two signatories will be available to sign requests for TSEP funds. Consultants under contract may not be a signatory.

<sup>2</sup> Suggested witness is an elected official other than one of the three signatories.



EXHIBIT 1-G

MONTANA DEPARTMENT OF COMMERCE  
TREASURE STATE ENDOWMENT PROGRAM

DESIGNATION OF DEPOSITORY FOR DIRECT DEPOSIT OF TSEP FUNDS

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SECTION 1 *(To be completed by TSEP recipient)*

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The (1)

*Name, Address and ZIP Code of TSEP Recipient's Bank*

has been designated as the depository for all funds to be received from the Montana Department of Commerce resulting from TSEP Contract No. (2) MT-TSEP-  
\_\_\_\_\_ for deposit to: (3)

*Account Name / Account # / ABA (Routing) #*

(4) \_\_\_\_\_ (5) \_\_\_\_\_  
*Name of Grant Recipient Address*

(6) \_\_\_\_\_ (7) \_\_\_\_\_  
*Signature of Chief Elected Official Title of Chief Elected Official*  
*or Executive Officer or Executive Officer*

(8) \_\_\_\_\_  
*Date*

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Section II *(To be completed by the bank)*

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The account identified in Section I has been established with this bank. All necessary documentation, including a power of attorney where necessary, which will legally enable this depository to receive state warrants from the State Auditor's Office for deposit to:

(9) \_\_\_\_\_  
*Account Name and/or Number*

(10) \_\_\_\_\_  
*Name of Bank*

(11) \_\_\_\_\_  
*Address where checks should be mailed*

The Depository hereby agrees to immediately notify the Recipient when a deposit is made in the above account.

(12) \_\_\_\_\_  
*Signature of Authorized Bank Officer*

(13) \_\_\_\_\_  
*Title of Authorized Bank Officer*

(14) \_\_\_\_\_  
*Date*

## PREPARATION OF DESIGNATION OF DEPOSITORY FORM

Block  
Number

### Instructions

1. Enter name, address and zip code of depository (bank) designated to receive TSEP funds.
2. Enter entire contract number.
3. Enter bank account number and the ABA (Routing) number where TSEP funds are to be deposited.
4. Enter name of TSEP recipient. (City or Town of \_\_\_\_\_, or \_\_\_\_\_ County.)
5. Enter complete address of TSEP recipient.
6. Signature of Chief Elected Officer (CEO) or Executive Officer for TSEP recipient.
7. Enter title of CEO or Executive Officer for TSEP recipient (Mayor, City Manager, or Chairperson of the County Commission).
8. Enter date form signed by CEO or Executive Officer of TSEP recipient.
9. Enter same account number as in #3 above.
10. Enter same name of depository (bank) as in #1 above.
11. Enter same address and zip code of bank where TSEP funds will be sent, as in #1 above.
12. Enter signature of authorized bank officer.
13. Enter title of authorized bank officer for depository.
14. Enter date form signed by authorized bank officer.

NOTE: Mail an original copy to the TSEP liaison and retain a photocopy for your records. It is important that there are no erasures, corrections or correction fluid on either copy. Also, all signatures should be made in ink.



**EXHIBIT 1- H**  
**SAMPLE CONTACT SHEET**

Date: _____	Time: _____
File: _____	
Received By: _____	

**CONTACT SHEET**

\*\*\*\*\*

Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Representing: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

NOTES: \_\_\_\_\_

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## CHAPTER 2

### Environmental Requirements



## CHAPTER 2

### ENVIRONMENTAL REQUIREMENTS

#### OVERVIEW

The Montana Environmental Policy Act (MEPA) seeks to avoid or mitigate adverse impacts on the environment by mandating careful consideration of the potential impacts of any development assisted with state funds or approved by a state agency. In addition, TSEP projects are subject to numerous other state environmental laws. In order to avoid problems which could cause delays, add significantly to project costs, or even prevent a project from being carried out, TSEP applicants were encouraged to be sensitive to potential environmental impacts when initially planning their projects.

Communities that have had experience with federally-funded infrastructure programs are aware that the detailed evaluation of potential environmental impacts required by the National Environmental Policy Act, normally takes place after the initial funding award has occurred. MEPA, likewise, requires that all "agencies" of the state consider the environmental impacts of proposed projects. However, TSEP projects are exempt from standard MEPA environmental assessment procedures because the Legislature, rather than a state agency, approves all TSEP projects. For this reason, all TSEP applicants were required to complete an environmental checklist as part of their application, which was intended to alert them to considerations that may have to be addressed in the location, design, or construction of a public facilities project to avoid potential adverse environmental effects or expensive mitigation or construction costs. TSEP applicants were also required to take into account any environmental impacts in the alternative analysis and the selection of the preferred design alternative. That information was used to advise legislators regarding potential environmental impacts before projects were approved by the Legislature.

Although TSEP projects are exempt from the standard environmental assessment procedures of MEPA, the projects are subject to a variety of state environmental laws and related regulations. As their TSEP projects get underway, TSEP recipients should continue to give strong consideration to any possible effects the proposed project could have on the environment and the need to comply with all applicable state environmental requirements.

#### APPLICABLE STATE REQUIREMENTS

Some of the key state environmental requirements that may affect local TSEP projects include the following:

Montana Environmental Policy Act (MEPA), Title 75, Chapter 1, MCA.

Stream Preservation Act, Title 87, Chapter 5, Part 5, MCA

The Natural Streambed and Land Preservation Act of 1975, Title 75, Chapter 7, Parts 1 and 2, MCA.

Montana Solid Waste Management Act, Title 75, Chapter 10, Part 2, MCA.

Solid Waste Management Act, Title 75, Chapter 10, Part 1, MCA.

Clean Air Act of Montana, Title 75, Chapter 2, MCA.

Water Pollution Act of Montana, Title 75, Chapter 5, MCA.

Public Water Supply, Title 75, Chapter 6, MCA.

Floodplain and Floodway Management, Title 76, Chapter 5, MCA.

If questions arise regarding compliance with a state environmental requirement, grant recipients should contact their TSEP liaison for assistance.

### **Floodplains and Wetlands**

Because water and sewer treatment facilities are frequently located in proximity to surface waters or low-lying areas, special attention should be paid to requirements related to floodplains and wetlands. The TSEP recipients must determine whether a proposed project is located in or will affect a floodplain or wetlands area. If assistance is needed in determining whether the project is located in or would affect a floodplain, please contact:

Floodplain Management  
Water Operations Bureau  
Water Resources Division  
Montana Department of Natural Resources and Conservation  
1424 9<sup>th</sup> Avenue  
PO Box 201601  
Helena, Montana 59620-1601

Phone Number: 444-6654

## **Lakes, Streams and Rivers**

The placement and construction of structures or improvements, such as bridges, below the low water mark of navigable water bodies requires a permit from the Montana Department of Natural Resources and Conservation. This requirement applies to any lake or streambed that has a history of commercial use or navigation. The structures covered by this requirement include bridges, roads, pipelines, powerlines, telephone lines, diversion structures and riprap. For information regarding compliance with the state permit requirements, contact:

Special Use Management Bureau  
Trust Land Management Division  
Montana Department of Natural Resources and Conservation  
PO Box 201601  
1625 11th Avenue  
Helena, MT 59620-1601

Phone Number: 444-2074

In addition, U.S. Environmental Protection Agency approval or a U.S. Army Corps of Engineers "404" permit may be required if wetlands will be affected.

A "310" permit from the County Conservation District may be necessary if construction work will affect a streambank.







## CHAPTER 3

### PROCUREMENT REQUIREMENTS

#### OVERVIEW

This chapter provides guidance to TSEP recipients regarding state requirements that govern the procurement of supplies, equipment, construction, and professional or other services with TSEP funds. **The principal focus of this chapter is the procedures required for selection of consultants to provide project management and engineering services.** The procedures required for the selection of contractors for public facilities construction are discussed in detail in Chapter 8, Public Facilities Construction Management.

Local officials should carefully review this chapter before entering into any agreements to purchase equipment or materials or to retain the services of a consultant or contractor. In addition, **all contracts to be paid for in part by TSEP funds must be submitted to MDOC for review and approval, prior to execution.** In addition, MDOC has available a technical assistance manual called "Building It Right," which provides considerable detail regarding the selection of contractors for public facilities projects.

#### A. APPLICABLE STATE REQUIREMENTS

Conflict of Interest (Sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA) set out statutory requirements governing conflicts of interest by state or local officials and employees.

County Contracts (Section 7-5-2301 to 2308, MCA) sets out procedures for procurement by county government.

Municipal Contracts and Franchises (Section 7-5-4301 to 4308, MCA) describe the requirements for awarding of contracts by Montana cities and towns.

Architectural, Engineering, and Land Surveying Services (Section 18-8-201 to 212, MCA). This law establishes a qualifications-based selection procedure for architectural, engineering and surveying services costing \$20,000 or more that are funded by state and local public agencies (state agencies, local governments, school districts, special districts or authorities of local governments).

Rules of Conduct for Public Officials and Employees (Sections 2-2-104, MCA). These sections of Montana law set out a code of ethics for state and local officials and employees.

## Montana Public Notice Requirements

Requirements for publication of notices for **municipalities** are set forth in Section 7-1-4127, MCA, Publication of Notice.

Requirements for publication of notices for **counties** are set forth in Section 7-1-2121, MCA, Publication and Content of Notice.

Grant recipients should be aware that Section 18-8-203, MCA, dealing with the procurement of architectural, engineering, and land surveying services, states that units of state and local government must publish a notice of their need for these services. However, because section 18-8-203, MCA does not establish a specific time frame or method of publication, it should be read in conjunction with sections 7-1-4127 or 7-1-2121, MCA. A copy of Section 7-1-4127 and 7-1-2121, MCA, is provided in Exhibit 3-A.

In all cases, **MDOC strongly recommends that recipients publish their notices in both local and appropriate regional newspapers.** Broad advertisement and solicitation for goods and services will help assure greater competition, lower cost, and a better selection of choices for the local government.

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### Summary of Notice Requirements in Montana Statutes

Statute	Title of Statute	Counties	Municipalities	Notes
18-8-203, MCA	<i>Public notice of agency requirement</i>	X	X	Sets forth requirements regarding when agencies must publish notice for professional services.
7-1-4127, MCA	<i>Publication of notice</i>		X	Notice published <b>twice</b> , at least 6 days apart. Sets forth other requirements related to type of media and newspapers acceptable for publication purposes.
7-1-2121, MCA	<i>Publication and content of notice</i>	X		Notice published <b>twice</b> , at least 6 days apart. Sets forth other requirements related to type of media and newspapers acceptable for publication purposes.

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## **B. TSEP RECIPIENT RESPONSIBILITIES**

The Montana statutes cited above provide the basic framework of requirements for the procurement of all supplies, equipment, construction, and services using TSEP funds by

local governments. The key requirements are summarized in the following sections. Local officials and staff or TSEP project consultants should always consult the actual text of current Montana law regarding applicable state procurement requirements. If local officials have any questions regarding these requirements they should contact MDOC for guidance.

## 1. Code of Ethics and Conflicts of Interest

The Montana Legislature has established a Code of Ethics for all officers and employees of State and local government. Sections 2-2-104, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, set out policy on conflicts of interest for state and local public officials and employees. A copy of the pertinent sections of Montana law is included in Exhibit 3-B.

## 2. Procurement Procedures

### a. Full and Open Competition

**All procurement transactions must be conducted in a manner that provides full and open competition. Procurement procedures should avoid any provisions that would unnecessarily restrict or eliminate competition.** Some of the procedures considered to be too restrictive include:

- placing unreasonable requirements on firms in order for them to qualify to do business,
- requiring unnecessary experience and excessive bonding,
- noncompetitive pricing practices between firms or between affiliated companies,
- noncompetitive awards to consultants that are on retainer contracts,
- organizational conflicts of interest,
- specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
- any arbitrary action in the procurement process.

b. Geographic Preference

TSEP recipients should conduct procurement in a manner that avoids the use of local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Montana law mandates or encourages geographic preference. When contracting for engineering services, geographic location may be a selection criterion provided its application leaves an adequate number of qualified firms to compete for the contract.

For example, including criteria in a request for proposals such as "knowledge of community" or "experience with community" would be considered to "unduly restrict competition" and are discouraged.

c. Written Selection Procedures

**TSEP recipients should have written selection procedures** that provide, at a minimum, that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain features that unnecessarily restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, describe those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand that must be met by responding firms must be clearly stated.
- (2) Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**C. Selecting The Method Of Procurement**

TSEP recipients should select the most appropriate method based upon the recipient's needs and the nature of the services required. Of special concern is MDOC's current procurement policy related to grant management services. In 1998, MDOC adopted a policy that grant administration services (consulting services) for CDBG, HOME and TSEP grants are procured using the following procedures:

- a. Requests for Proposals (RFPs) are required for any services over \$100,000 and are recommended for procurement actions under \$100,000 that are complex and/or where qualifications and desired work products cannot easily be handled by telephone rate quotations.
- b. "Small purchase" procedures can be used where the procurement will not cost more than \$100,000 in the aggregate, (see Procurement by "Small Purchase" Procedures below).
- c. If a local government's procurement policy is more restrictive than MDOC procedures, the local government's policy will govern the procurement procedures to be followed.

However, the use of "small purchase" procedures are not required for the procurement of grant administration services if all of the following are met:

1. there is a long-term partnerships between a local government and a for-profit or non-profit partner,
2. the partnership is based upon a current legal relationship (signed contract),
3. the partner is managing the grant funds,
4. the local government does not have the staffing capability to manage the grant, and
5. the relationship will continue indefinitely following project closeout.

An example of a "long-term partnership" would include situations where local governments have originally procured through appropriate methods the services of a for-profit or non-profit partner to provide services such as grant writing and grant administration and will continue to provide those services indefinitely following the closeout of the project. While this type of partnership is most likely to apply to multi-jurisdictional organizations such as Human Resources Development Councils (HRDC) or economic development corporations, it could also apply to for-profit consultants that maintain an ongoing partnership with a local government to provide those services.

The following is a summary of four basic selection alternatives and the requirements associated with them. If local officials have any questions regarding these requirements they should consult the MDOC TSEP staff assigned as liaison for their project. The four methods include:

#### 1. Procurement by "Small Purchase" Procedures

The "small purchase" method of procurement is generally used to purchase supplies, equipment, or other property that do not require sealed bids and for

professional services that do not require competitive proposals. This procedure is intended for relatively simple and informal procurement of services, supplies, or other property that cost less than the amounts specified in Montana law for competitive bidding requirements. (These amounts differ for state, county, and municipal governments.)

If the small purchase procurement procedure is used, price or rate quotations should be solicited from an adequate number of qualified sources (three to five). Written price quotations are the preferable form of documentation. When price quotes are obtained orally, written supportive documentation must be maintained in local TSEP files, such as detailed notes describing telephone contacts. Local governments should record the rate or quote along with other identifying information (name, address, and telephone number) and document the questions asked.

**When procuring a grant administrator, the small purchase procurement procedure takes the form of a “limited solicitation.” Rather than simply obtaining a price quote, the local government should request proposals from qualified vendors (minimum of three) of their choice and then select the consultant based upon qualifications and what services it can offer.** In this situation, price can be a factor in the selection of the grant administrator. Past experience with a particular consultant may also play a substantial role in the selection of the consultant. The limited solicitation process would be very similar to the Request for Proposal (RFP) process, but the RFP would not need to be advertised. The local government would still need to have a written procurement procedure and stated evaluation criteria.

**However, the local government may choose to simply obtain a price quote and use that as the only selection criteria for a grant administrator.** The local government would need to provide a very detailed scope of work to the vendors solicited, specifically defining what services are required and what will be expected from the grant administrator.

In addition, it has been noted by the MDOC staff that some local governments have chosen to include grant writing/grant administration as one of the services to be provided by the project engineer, and not going through a separate procurement for a grant administrator. While this is not prohibited, it does limit the pool of potential grant administrators that the local government would evaluate. There are several highly qualified consultants that provide grant administration services that are not engineers and would not have the opportunity to submit a proposal for their services.

The Department recommends that if the local government chooses to procure a grant administrator at the same time it procures an engineer, it should at least include in the advertisement that grant administration services, in addition to engineering services, are being sought. The RFP should make it clear that a consultant may submit a proposal just for the grant administration services; MDOC also recommends that the advertisement state this also. Keep in mind that if the local government chooses to use the project engineer for grant administration, the local government will need to play an even more active role in the administration of the grant, since the engineer/grant administrator (same firm) cannot be reviewing and signing off on its own work and claims for payment.

Under Montana law (18-8-201, MCA), the selection of a consultant for architectural, engineering, or surveying services requires a competitive solicitation and negotiation process for projects for which the fees are estimated to exceed \$20,000. **For other professional services, such as grant administrators, legal, appraisal, or audit services, MDOC recommends using a competitive solicitation and negotiation process using an RFP regardless of the amount, since this process can help to ensure that the local government procures a consultant that will be best qualified and not just the least cost.**

Regardless of the method used to obtain a grant administrator, the local government should provide information to MDOC in advance about how they intend to procure, or how the grant administrator was procured, if TSEP funds will be used to pay these services. The information submitted should include a list of vendors to be solicited, a copy of any advertisements, a copy of the request for proposals, or the information detailing the scope of work if price is the only consideration.

## 2. Procurement by Competitive Sealed Bid

**Competitive sealed bidding is the standard procurement process followed for construction activities.** Chapter 8, Construction Management, includes a detailed step-by-step discussion of the procedures involved in selecting a construction contractor and the requirements that are applicable to TSEP-funded construction contracts.

TSEP recipients should refer to the applicable provisions of Montana law for advertising requirements (Section 7-5-2301, MCA for county governments and Section 7-5-4302, MCA for municipalities) to determine when the competitive sealed bid method must be used. County water and sewer districts must comply with the statutory bidding requirements for counties.

Procurement by competitive sealed bids (formal advertising) is used when the following conditions exist:

- a. a complete, adequate and realistic specification or purchase description is available;
- b. two or more responsible suppliers are willing and able to compete effectively for the business;
- c. the procurement lends itself to a firm fixed-price contract (a specified price to be paid when the items or services are delivered); and
- d. selection of the successful bidder can appropriately be made principally on the basis of price.

Bids are publicly solicited (advertised in newspapers) and kept in confidence until there is a public bid opening. A firm-fixed price contract is awarded to the responsible bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. When using formal advertising, the following requirements apply:

- a. The invitation for the bids must be publicly advertised and bids must be solicited from an adequate number of known suppliers or contractors, providing them sufficient time prior to the date set for opening the bids;
- b. The invitation for bids, including specifications and attachments must clearly describe the items or services required in order for the bidders to properly respond.
- c. All bids must be opened publicly at the time and place stated in the invitation for bids.
- d. A firm-fixed price contract award must be made in writing to the lowest responsive and responsible bidder.
- e. Any or all bids may be rejected if there is a sound documented reason.

### 3. Procurement by Sole Source

**Sole source procurement is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined to be inadequate.** The only circumstances under which a contract funded with TSEP monies may be awarded by sole source procurement are as follows:

- a. sole source procurement would be permissible under Montana law; and
- b. the items or services required are available only from one source;
- c. a public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods described above; or
- d. after solicitation from a number of sources, competition is determined to be inadequate.

The fact that a contractor is currently performing other consultant services for the TSEP recipient is not, by itself, an adequate justification for a sole source contract award. **In all cases, sole source procurement that will involve TSEP funds must have prior approval from MDOC.**

#### 4. Procurement by Competitive Proposals

The phrase "procurement by competitive proposals" is often used interchangeably with the frequently used term "competitive negotiation." This method of procurement is generally used when conditions are not appropriate for the use of sealed bids.

**Under Montana law (18-8-201, MCA), the selection of a consultant for architectural, engineering, or surveying services requires a competitive solicitation and negotiation process for projects for which the fees are estimated to exceed \$20,000.** The law applies to state agencies, local governments, special districts, or any other entity or authority of local government, in corporate form or otherwise. It therefore applies to all TSEP recipients.

In situations where the engineering services are being provided by a governmental agency, such as the Indian Health Services, and is being provided as a "in-kind" service for a project, a competitive solicitation and negotiation process is not required.

**Although not required under most circumstances, procurement by competitive proposals is the recommended procurement procedure for retaining a grant administrator.** Procuring professional services using competitive proposals is in your best interest, since it allows you to obtain the most qualified person for the job. In addition, it has been noted by the MDOC staff that some local governments have chosen to include grant writing/grant administration as one of the services to be provided by the project engineer, and not going through a separation procurement for a grant administrator. While this is not prohibited, it does limit the

pool of potential grant administrators that the local government would evaluate. There are several highly qualified consultants that provide grant administration that are not engineers and would not have the opportunity to submit a proposal for their services.

**The Department recommends that if the local government chooses to procure a grant administrator at the same time it procures an engineer, it should at least include in the advertisement that grant administration services, in addition to engineering services, are being sought. The RFP should make it clear that a consultant may submit a proposal just for the grant administration services; MDOC also recommends that the advertisement state this also.** Keep in mind that if the local government chooses to use the project engineer for grant administration, the local government will need to play an even more active role in the administration of the grant, since the engineer/grant administrator (same firm) cannot be reviewing and signing off on its on work and claims for payment.

Procurement by competitive proposals requires the contracting agency to publicly announce requirements for the services or project, to consider proposals from responding firms, and to negotiate a contract with the most qualified firm at a price the entity determines to be fair and reasonable. If an agreement cannot be reached with the top ranked firm, the law specifies that negotiations are formally terminated and the local government negotiates with the second ranked firm.

Because the retention of consultant services for engineering or project management is a major concern for most TSEP recipients during the start-up phase of their project, the following discussion will cover the issues involved in this method of procurement in greater detail. With competitive proposals, proposals are advertised and requested from several qualified sources. Procedures for competitive proposals require the following:

- a. Requests for proposals (RFP's) which describe the general scope of the services or work to be performed, and which identify all evaluation factors and their relative importance, must be publicized through advertisements and announcements.
- b. Proposals must be solicited from an adequate number of qualified sources (at least two). Any response to the RFP must be considered.
- c. TSEP recipients and sub-TSEP recipients must have a method for conducting technical evaluations of the proposals received according to the criteria specified in the RFP and for selecting awardees; and
- d. Awards must be made to the responsible firm whose proposal is most advantageous to the program, with the specified factors considered.

## **D. PREPARING A REQUEST FOR PROPOSALS (RFP)**

An RFP is a written announcement that invites consultants to compete for the provision of services to your local government. Although the RFP process may appear time consuming, taking the time to make sure that your community hires a competent engineer or other consultant will, in the long term, likely save money and prevent problems. The RFP should include:

1. the name of the local government issuing the RFP;
2. a brief description of the project including location, purpose, time frame, and present status;
3. a general description of the scope of the services to be provided by the consultant;
4. the amount budgeted for the proposed scope of services;
5. the method of payment to be used;
6. the time frame for performing the work, including any major milestones or deadlines involved;
7. information required of each respondent in order to make the selection, including consultant qualifications, related experience on similar projects, current and projected workloads, capability to meet time and budget requirements and identity and qualifications of professional personnel to be assigned to the project;
8. the methods and criteria to be used in evaluating the proposals, and the relative weight of each of the criteria;
9. the name and telephone number of a local person who can be contacted for further information regarding the RFP; and
10. directions for submitting a response to the RFP.

**The scope of work for the entire project should be included in the RFP. For instance, if you are primarily soliciting the services of an engineer to complete the planning and preliminary engineering for a project, but you may want to retain the engineer's services for the design and construction phases of the project, it should be specifically stated in the RFP and addressed by the responding firms.**

You should not go into precise detail about the scope of the services the consultant is expected to perform. You should be telling them what you want done, not precisely how to do it. You do not want the response to be just a repeat of your RFP. Allow the consultants to demonstrate their knowledge and experience by filling in the details of how they would approach the problem and the alternatives that you should consider.

The RFP should be concise and to the point, containing all of the important information needed for the firms to respond in a factual manner. However, do not overdo the RFP; include only the necessary information. A wordy or unclear RFP will unnecessarily increase the time each firm spends preparing their response and your time in reviewing the proposals. You should, however, be sure to specify any services or equipment the consultant will be expected to provide, such as requiring that they open a local office or provide secretarial or financial management services. These can significantly affect how the consultant will budget his or her time and resources. The RFP should also describe any unique problems involved in the project and any previous studies that would be available for their review.

TSEP recipients may want to consider including the amount budgeted for the services in the RFP. This may help a consultant decide whether to go to the effort of responding. Knowledge of the available budget will also help the consultant fit the proposal to your financial resources to make sure that time and resources are used most efficiently.

Your RFP should not only describe the criteria to be used in evaluating the proposals but also the relative weight attached to each. This is important for the consultant to better understand the priorities of your concerns and how to respond to them.

The directions for submitting the RFP should specify the date and time of the submittal deadline and the number of copies required. Since proposals are sometimes hand delivered, be sure to include an office address where someone will be available to accept them.

Your RFP should also include the names and phone numbers of people that will be available and knowledgeable enough to answer questions about the RFP. Do not just list the chief elected official if that person is not likely to be available during normal business hours.

Consultants interested in responding will usually contact you before they decide to submit a proposal. MDOC recommends that you be frank in answering the consultant's questions. Consultants should be allowed to review your TSEP application so that they can gain a better understanding of what your community hopes to accomplish through the project.

**Exhibits 3-C and 3-D are sample formats for RFP's for management and engineering services. Both provide only the outline for the content of an RFP; each must be**

carefully adapted to reflect the unique activities and considerations involved in your TSEP project.

It is important to remember that if the original RFP does not cover all of the services that are needed to complete the project, you may have to go through the RFP selection procedure again. Any additional engineering services not indicated in the original RFP must be procured with a separate RFP if the cost exceeds \$20,000. For example, when you hire an engineering firm to prepare just the facility plan (planning phase), and then later you decide to re-hire the same firm for the final design and construction phase, a new RFP is required to be advertised and the selection procedures must be repeated. Competitive selection procedures must be used to procure the new services.

The requirements of the RFP process are sometimes confused with the final contract for services when hiring a consultant or engineering firm. The owner may reserve the right to procure services from another firm, in the event that the original consultant/engineering firm's work is unsatisfactory, even though the original RFP included the scope of services for the entire project. For example, the local government/owner may choose to procure services with another consultant/engineering firm for final design if work performed during the preliminary planning phase does not meet the owners approval or is not consistent with the contract for services agreement. The local government/owner would need to advertise a new RFP and repeat the selection procedures.

## E. SOLICITING PROPOSALS

TSEP recipients must be able to document that proposals were solicited from an adequate number of qualified sources and that full and open competition took place prior to its selection of a consultant. Encouraging adequate competition is of obvious interest and benefit to TSEP recipients in terms of retaining the most qualified consultant at a reasonable cost. The more responses, the better the community's chance of hiring the best qualified firm.

At a minimum, the local government must advertise the RFP at least twice in the newspaper used for its regular legal advertising. MDOC's concern in reviewing local procurement procedures is that the TSEP recipient be able to demonstrate reasonable efforts to solicit from an adequate number of qualified sources. If the RFP is advertised in a small town newspaper with only local distribution, the effort may be open to question. Therefore, **MDOC strongly recommends that TSEP recipients advertise at least once in a newspaper with regional distribution in their area of the State, in addition to any local advertising.**

**Advertising the local government's request for proposals does not mean that the entire text of the RFP must be included in a legal advertisement.** The advertisement can briefly announce that the community is requesting proposals and that a copy of the detailed RFP is available upon request. (See example in Exhibit 3-E.) This approach, in lieu of publishing the entire text of the RFP, might substantially reduce advertising costs. However, it will mean that the grant recipient must allow additional time for persons or firms to request and receive a copy of the RFP and to respond.

You should send copies of the RFP to firms that have previously indicated an interest in submitting a proposal. You can also contact other firms directly and ask them to submit proposals. By retaining copies of the letters sent to these firms you will have clear documentation of your efforts to invite competitive proposals, in the event that you receive a limited number of responses.

**MDOC recommends that you allow at least four weeks for responses to your RFP.** MDOC considers three weeks the very minimum to allow for a reasonable time for a firm to prepare an adequate response. Less time for response would unnecessarily restrict competition. If time is too limited, some very qualified potential respondents may either be eliminated or may not be allowed sufficient time to prepare a quality proposal.

## **F. PRIOR COMMITMENTS TO CONSULTANTS**

In many cases, a TSEP recipient will have already worked with a consultant or engineer preparing the original application. However, the community must still go through the RFP selection process unless it can clearly document that the original RFP process met all state procurement requirements and was sufficiently detailed to describe the engineering or architectural services that will be compensated under the TSEP project budget. The original consultant may respond to the local government's RFP and it is perfectly legitimate to consider the consultant's prior performance when making the selection. The RFP process does not preclude you from hiring an engineer that has previously worked for you and who performed well. It does mean that you must give other qualified firms a reasonable opportunity to propose on a project.

In some cases, a community may receive a proposal for what is called a "loss leader" arrangement where the consultant offers to prepare or assist with a grant application at cut rates or for no cost in return for favorable consideration in the selection process for a grant administrator or engineer. Professional organizations consider this practice unethical because it deprives the client of the benefits that result from competition among competent professional consultants. Also, using an evaluation criterion such as "familiarity with project or community," for example, would be considered as restricting competition because it would favor a consultant or firm that had worked with the community previously and possibly discourage competition by other consultants.

MDOC generally discourages the use of RFP's that consolidate grant application preparation and engineering or grant administration services. The practical effect may often result in reduced competition for both grant preparation and engineering or grant administration services. For example, an engineering firm or grant writing consultant may feel ethically constrained from preparing an application for another community if it already is working on behalf of another. If these services are procured separately, the grant recipient gains the benefit of increased competition by competent professionals for the needed services. Both TSEP applicants and TSEP recipients have everything to gain and nothing to lose by encouraging maximum free and open competition by consultants.

## **G. REVIEWING PROPOSALS AND SELECTING THE CONSULTANT**

The local government should appoint a committee of three to five people to review the responses to the RFP. Members of the committee should be familiar with the RFP and work to be accomplished through the contract. Try to include a person who is very familiar with the problems of the public facility, such as a public works supervisor. It may also be helpful to have a member of the committee with technical knowledge or experience appropriate to the project. The committee should try to keep to a minimum the time between the proposal deadline, evaluation of the proposals, and the final selection of the consultant. Forty-five days is a reasonable time period.

TSEP recipients should have a method for conducting technical evaluations of the proposals received and for selecting awardees. TSEP recipients should rank the proposals according to the evaluation factors listed in their RFP and assign points to each, based on a pre-established number of points for each criteria which is consistent with their relative importance as described in the RFP. **Under state law, the ranking criteria for selection of engineers, architects and surveyors must include, at a minimum:**

1. the qualifications of the professional personnel to be assigned to the project;
2. the consultant's capability to meet time and project budget requirements;
3. location;
4. present and projected workloads;
5. related experience on similar projects; and
6. recent and current work for the entity issuing the RFP.

An effective way to handle the ranking of the responses to your RFP is to put together a matrix with your evaluation criteria on one side of a sheet of paper and the names of the consultants responding on the top. Each criterion is assigned a new point value. Each

proposal is reviewed, scored, and point scores added up. The scores you finally assign to the respondents should be retained as part of your record of the rationale you used to select the consultant. The matrix can be used twice: once, to screen the written proposals to select respondents to be interviewed and again, to record the ranking of those chosen for an interview. An example of possible selection criteria, a sample evaluation form, and a matrix that incorporates the required ranking criteria is included in Exhibit 3-F.

In making your selection, you should remember to distinguish between the overall firm and the person(s) that will actually be assigned to your project. **Be sure to carefully consider the qualifications of the person the firm intends to assign to your project.** The fact that a firm has an excellent reputation does not guarantee the competence of the person who will be assigned to work with you.

It is not necessary to interview a large number of consultants to demonstrate adequate competition. Responding to an RFP can involve a significant amount of time and expense for responding firms. It would be unfair to ask a consultant to also take the time and to incur travel expenses if they are unlikely to be selected. If you receive a large number of responses, try to limit the number of consultants to be personally interviewed to the top two or three firms (five should be the maximum), based on their written proposals and reference checks. If you have determined that some proposals are weaker than others, these should be eliminated from consideration. **At a minimum, local officials should interview at least two of the firms or persons that submitted responses before making a selection, in order to demonstrate that adequate competition took place.** Do not pre-select a qualified firm and then invite others to interview so that an appearance of competition is created. Good, qualified firms may not respond to your RFP the next time you solicit proposals for a public facilities project.

The review committee should interview the finalists separately. Do not allow other firms to sit in on any firm's presentation. The consultants should describe their qualifications, the manner in which they would handle the work tasks, and respond to any questions regarding the content of their proposals. The individual who will be principally responsible for doing the work on your project day-to-day should be present at the interview. Allow adequate time for formal presentations and questions from the committee. The Montana Technical Council considers an hour a reasonable minimum.

Standard questions should be asked during the interview to allow comparison of the responses. Ask the same questions of each firm. Provide each person on the selection committee a sheet listing the questions to be asked during the interview. Each member of the selection committee should note the consultant's answer to each question, and should rate the answer using a predetermined scoring method.

After ranking the responses in order of their scores on the evaluation factors and checking references, the committee will make their recommendation. Once it has reached a final

decision, the local government should notify all of the respondents of the results in writing, as soon as possible.

## H. CHECKING REFERENCES

**Before you make your final selection of a consultant, there is no step that is more important than to thoroughly check references.** Always request a list of prior clients, including their name, description of the work performed, address, and the name and phone number of a person to contact. A list of their most recent projects is usually best. You should contact several references for each respondent being considered. Some useful questions might be:

1. Were you satisfied with the quality and timeliness of the work?
2. Was the consultant knowledgeable about funding programs and related requirements?
3. Was the consultant willing and able to work closely and effectively with local staff?
4. Were the costs or charges reasonable in relation to the work actually performed?
5. Did you experience any problems that would discourage you from hiring them again?

Also check to see if the work done for these clients is similar to what you want the consultant to do. The ability to write a grant application, for example, does not mean that the same consultant has the capability to assist you with the management of a grant.

Sometimes the person or firm you are interested in will be a new firm with few, if any, client references. New, small firms can sometimes be just as good as well-established, large firms, so instead of asking for client references, you would ask for employer references.

MDOC TSEP staff may also be able to help you identify references for the finalists you are considering. The staff is familiar with several firms and may be able to refer you to other communities that have knowledge of the consultants you are considering.

**Checking references prior to selecting a consultant is the most important action you can take to avoid becoming involved with an unsatisfactory consultant.**

## I. MDOC REVIEW OF PROCUREMENT PROCEDURES

Before the community enters into a contract, MDOC recommends that local officials send their assigned TSEP liaison a copy of the advertisement used to publicize the RFP, a copy

of the RFP itself, and a summary of the procedures followed to select the consultant, including copies of the evaluation forms used to compare the responses. MDOC can then review the procurement practices used by the TSEP recipient to assure that they are in compliance with state requirements.

TSEP recipients should retain all documentation in their TSEP project files to demonstrate the basis for selection or rejection of consultants, consultant qualifications, contract specifications, and scope of work.

When a grant recipient receives only one response to a competitive solicitation, the procurement process may be reviewed by MDOC to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the local government to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of unnecessarily restricting competition.

## **J. CONTRACT PRICING AND METHOD OF COMPENSATION**

Once the local government has made the final selection of a consultant, the next step is to negotiate the terms for compensation for the consultant's services at a "fair and reasonable" cost. Montana's law in regard to selection of architects, engineers, and surveyors, requires the local government to "negotiate a contract with the most qualified firm ... at a price which the agency determines to be fair and reasonable."

A response to an RFP should not be confused with a competitive bid. A bid is an estimate of cost in response to detailed specifications such as for construction projects where selection can be made principally on the basis of price. A response to an RFP in the competitive proposal process is a description of how a consultant proposes to approach solving your problem. The main focus in selecting the consultant is to evaluate the quality of the proposal and the consultant's "demonstrated competence and qualifications for the type of professional services required." **Selection is based on a consultant's qualifications, not on the basis of cost. Specific costs should only be discussed after the consultant has been selected.**

Communities should not choose an engineer only on the basis of cost. It is well worth spending a little extra to get a qualified engineer who will design a sound project that will provide cost-effective service for years to come.

TSEP recipients can consider comparative prices in the area for similar services to determine if proposed costs are "fair and reasonable." If the local government and the selected respondent cannot come to agreement on the scope of services and a mutually satisfactory fee, local officials should formally terminate the negotiations in writing and

repeat the process of negotiating a scope of services and negotiating terms with the second-ranked respondent.

Consultant compensation is typically on the basis of a fixed price (a specified price to be paid when the product or services are delivered and accepted) or cost-reimbursement (costs are reimbursed as costs are incurred). **However, the only means of compensating consultants when TSEP funds will be used in whole or part to pay for those services is a cost reimbursable contract with a specified ceiling.**

With this type of contract, consultants are paid on an hourly basis not to exceed a specified amount, and profit is included in the hourly charges. Contracts must specify the hourly rate that will be charged, scope of services, and the ceiling for charges. In order to be eligible for TSEP reimbursement, contractors will be required to submit itemized invoices describing the services furnished, number of hours worked to accomplish each item, amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed. (See Exhibit 3-J for an example of a consultant's invoice.)

**Under no circumstances, is a percentage of construction costs (contingent fees) method of compensation allowable for any publicly funded contract. The "costs plus a percentage of costs" system of compensation is invalid under Montana law (Section 18-2-314, MCA).**

When negotiating payment terms, ask the consultant to explain the firm's estimated fee. Make sure you understand exactly what services will be provided. Is there a distinction between basic services and additional services? What circumstances could significantly change the estimate?

One consideration in negotiating payment terms is whether the terms provide for adequate control of the consultant's performance. Most consultants will prefer to receive payments in installments during the term of the project, rather than in one lump sum at the end of work activities. However, remember that payment must be based on services actually provided and the hourly rate of those that performed those services. Whenever possible, the grant recipient should assure that reimbursement is tied to the accomplishment of measurable objectives, such as key tasks or milestones in the scope of services or implementation schedule, in order to give the local government adequate control over contractor performance.

In negotiating payment terms for management services contracts, communities can provide for a retainage or holdback of a percentage of the contract funds (often about five percent) pending completion of conditional project closeout and the resolution of any monitoring findings which may be related to the consultant's performance. For public facilities, the final payment of the engineering fee could be retained until the "as built" construction drawings have been submitted to the proper authorities and, if applicable, an operation and

maintenance manual has been provided to the TSEP recipient and approved by the Department of Environmental Quality.

## K. PREPARING THE CONTRACT

The grant recipient's negotiation with the selected consultant will include the scope of services, timetable, contract cost, and payment terms. In most cases, the consultant will prepare a draft scope of services based on the proposal submitted in response to the RFP. This should include detailed descriptions of the services to be provided, along with a work schedule indicating the time line for completion of the more significant tasks, and identify the products or services to be provided. (Grant recipients negotiating scopes of services for project management can review the sample management plans in Exhibits 1-B and 1-C, Chapter 1, to get an idea of the activities that can be included in a scope of services.)

The community should insist that **any "understanding" between the consultant and the local government should be written into the contract.** "Gentlemen's agreements" can cause problems, even when involving apparently minor issues. The more time that is spent on describing who will be doing what, when, and for what fee, the smoother relations will be later on. Several points that should be clarified in the contract to protect the community's interests are:

1. State that only those key individuals who are identified in the firm's proposal for specific tasks are permitted to charge their time and expenses to the job. This should not apply to clerical and support staff whose costs were not specified in the consultant's original proposal.
2. All commitments stated in the contract must be honored unless changes are approved in writing.
3. It is important that the contract allow a fair and reasonable profit for the consultant. The basis for this could be previous experience, contacts with other municipalities, or published professional guidelines.

Preparation of the contract itself is relatively simple once these issues have been agreed upon. MDOC has prepared a sample professional services agreement which includes the standard "boilerplate" language used in such contracts and the clauses required for TSEP-funded contracts (Exhibit 3-G). **It is the TSEP recipient's responsibility to include provisions related to all applicable TSEP requirements in any contract or agreement through which TSEP funds are passed on to a contractor or subcontractor.** Exhibit 3-I is a checklist of required clauses for professional services contracts.

Exhibit 3-H may be used by engineers as supplemental conditions to their standard contracts for professional services, if they prefer to use their regular contract format. In

both sample formats, the required clauses have been noted with an asterisk. These required clauses cover issues such as procedures dealing with breach of contract and termination, patents and copyrights, and access to and retention of records. The grant recipient's attorney should be involved in the preparation of the contract to assure that all applicable requirements have been addressed and that the community's interests are represented.

**The draft contract must be submitted to MDOC for review prior to execution to make sure that all required state contract conditions have been included.**

## **L. RECORD KEEPING REQUIREMENTS**

**All TSEP recipients must maintain adequate records for any procurement that will be funded with TSEP funds.** Regardless of the method of procurement used, TSEP recipients must develop and retain documentation to demonstrate their reasons for choosing the method of procurement, the basis for selection or rejection of consultants, consultant qualifications, contract specifications, and scope of work. This documentation should include copies of the RFP, legal advertisements, affidavits from newspapers verifying publication, and other related selection materials. TSEP procurement files must also document the basis for the contract or purchase price.

When a grant recipient receives only one response to a competitive solicitation, the procurement process may be reviewed by MDOC to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the local government to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of restricting or eliminating competition.

Financial information in support of any contract payments must also be maintained. This documentation includes vouchers, invoices, contracts, checks, budget transfer memoranda, and other transaction documentation. The recipient must also be able to document that vouchers and invoices were reviewed to verify financial and contractual compliance before payment was made.

## **M. CONTRACT ADMINISTRATION AND SUPERVISION**

TSEP recipients should establish and maintain procedures to monitor contractor performance to ensure that they are performing in accordance with the scope of services, timetable, and any other terms and conditions specified in their contracts or purchase orders. Ongoing monitoring of the contractor's performance and progress in completing contracted work tasks will prevent problems which may affect the quality, timely completion, or cost of the contract for your overall TSEP project.

All payment requests must be carefully reviewed, before they are approved, to make sure that costs are reasonable and are consistent with the terms of your contract or purchase order, before they are approved. Local officials should require narrative progress reports with each billing. The consultant should be requested to report on each separate product specified in the budget. Billing should list hours spent on each budget category by employee classification. If you do not understand an item on an invoice or believe a charge is not adequately documented, you should contact your consultant and resolve the question before payment is approved.

Some communities have found that their relationship with a consultant goes more smoothly if a specific person, such as the mayor or clerk, is assigned to act as day-to-day liaison with the consultant and to review progress reports and requests for payment. A common frustration of consultants is that too often no one is available to give them direction or feedback on issues involving the project. Communication with the consultant can also be improved by having regular meetings with the town council or an advisory group to keep local officials and residents up to date on project progress and to invite their suggestions regarding any problems that might be encountered.

If grant recipients are encountering problems with nonperformance by a contractor they should contact MDOC for guidance. All contracts must include provisions for termination.

## SUMMARY: PROCUREMENT STANDARDS

1. All procurement of supplies, equipment, construction, and professional or other services must follow the procedures set out in Montana law.
2. There are four basic methods of procurement that can be used by TSEP recipients:
  - a. small purchase procedures;
  - b. competitive sealed bids (formal advertising) (See Chapter 8 for a detailed description of the required procedures);
  - c. noncompetitive (sole source) negotiation; and
  - d. competitive proposals and negotiation.
3. Requests for Proposals must be sufficiently detailed to clearly describe the services that will be performed.
4. **All contracts entered into by TSEP recipients must contain required clauses to assure compliance with all applicable State laws and regulations. All contracts must be reviewed and approved by MDOC before they are executed.**
5. TSEP recipients must retain written documentation regarding the procurement procedures used for each contract.
6. TSEP recipients should establish procedures to assure ongoing review of contractor performance and contract expenditures during the term of any TSEP-funded project.

## **CHAPTER 3**

### **EXHIBITS**

- 3-A Publication of Notice for Municipalities and Counties
- 3-B Rules of Conduct for Public Officials and Employees, and Conflict of Interest Statutes
- 3-C Sample Format for a RFP for Management Services
- 3-D Sample Format for a RFP for Engineering Services
- 3-E Sample Format for Advertising the Availability of a Request for Proposals (RFP)
- 3-F Sample Selection Criteria for Evaluating Consultant Proposals
- 3-G Sample Format for a Professional Services Contract
- 3-H Sample Format for Supplemental Conditions to Standard Architectural or Engineering Services Contracts
- 3-I Sample Checklist of Required Contract Clauses for Professional Service Contracts
- 3-J Example of a Consultant's Invoice

## EXHIBIT 3-A

### PUBLICATION OF NOTICE FOR MUNICIPALITIES AND COUNTIES

**7-1-4127. Publication of notice--content--proof.** (1) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

(2) The newspaper must be:

- (a) of general paid circulation with a periodicals mailing permit;
- (b) published at least once a week; and
- (c) published in the county where the municipality is located.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) In a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county.

(5) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(6) The notice must be published twice, with at least 6 days separating each publication.

(7) The published notice must contain:

- (a) the date, time, and place of the hearing or other action;
- (b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(8) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(9) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

**7-1-2121. Publication and content of notice -- proof of publication.** Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) The newspaper must be:

- (a) of general paid circulation with a periodicals mailing permit;
- (b) published at least once a week; and

- (c) published in the county where the hearing or other action will take place.
- (3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.
- (4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.
- (5) The notice must be published twice, with at least 6 days separating each publication.
  - The published notice must contain:
    - (a) the date, time, and place of the hearing or other action;
    - (b) a brief statement of the action to be taken;
    - (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
    - (d) any other information required by the specific section requiring notice by publication.
- (7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.
- (8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

## EXHIBIT 3-B

### RULES OF CONDUCT FOR PUBLIC OFFICIALS AND EMPLOYEES AND CONFLICT OF INTEREST STATUTES

**2-2-104. Rules of conduct for all public officers, legislators, and employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

**2-2-201. Public officers, employees, and former employees not to have interest in contracts.** (1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor

responsibility, or renders legal advice concerning the contract;

(d) "former employee" does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

**7-3-4367. Control of conflict of interest.** (1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

**7-5-2106. Control of conflict of interest.** No member of the board must be directly or indirectly interested:

- (1) in any property purchased for the use of the county;
- (2) in any purchase or sale of property belonging to the county; or
- (3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

**7-5-4109. Control of conflict of interest.** (1) The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the

conflict will outweigh the public interest served by avoiding the conflict.

**SAMPLE NOTICE FOR A PUBLIC HEARING  
TO CONSIDER WAIVER OF THE CONFLICT OF INTEREST  
A PROVISION FOR LOCAL GOVERNMENT OFFICERS AND EMPLOYEES**

NOTE: The 1993 Legislature amended the two statutes (section 2-2-201 and 7-5-4109, MCA) which prohibit conflicts of interests by public officials and employees regarding public contracts. Under the amended law, the governing body of a city, town, or county can waive the application of the conflict of interest prohibition for a present or former city, town, or county officer or employee who in an official capacity does not influence the decision-making process or supervise a function regarding the contract in question. A governing body can grant a waiver only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body must consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict with outweigh the public interest served by avoiding the conflict.

The following model format can be adopted to prepare the required advertisement for the public hearing mandated by the law.

## NOTICE OF PUBLIC HEARING

The \_\_\_\_\_ Town (City) Council (or \_\_\_\_\_ County Commissioners) will hold a public hearing on \_\_\_\_\_ (day), \_\_\_\_\_ (month), 20\_\_\_\_, in \_\_\_\_\_ (building or location) at \_\_\_\_\_ (time).

The purpose of the hearing is to review a potential conflict of interest situation involving the Town's (City's or County's) \_\_\_\_\_ (type of project) project which is being funded, in part, through the Treasure State Endowment Program (TSEP) administered by the Montana Department of Commerce. At the hearing, the Council (Board of Commissioners) will explain state law governing conflict of interest by public officials and employees, consider its application in this case, and decide whether or not granting a waiver is justified. The public is invited to attend. Persons seeking more information about this matter should contact:

\_\_\_\_\_ (name), \_\_\_\_\_ (title),  
\_\_\_\_\_ (telephone) during regular office hours.



## EXHIBIT 3-C

### SAMPLE FORMAT FOR REQUEST FOR PROPOSALS FOR MANAGEMENT SERVICES

**Note:** The following is intended only as an example of a format that may be used to issue a Requests for Proposals (RFP) for project management services. TSEP recipient's should consider the content of their RFP's very carefully before they are issued. In particular, local officials should exercise care in drafting the scope of services and the factors to be used in evaluating proposals to assure that they are both complete and appropriate for your community and project. See also Exhibit 3-E for a sample format for advertising the availability of the RFP.

The \_\_\_\_\_ (Town or City of \_\_\_\_\_ or \_\_\_\_\_ County) has been awarded a Treasure State Endowment Program (TSEP) grant in the amount of \$\_\_\_\_\_ by the Montana Legislature for \_\_\_\_\_ (description of project including purpose, location, time frame, and present status).

Contingent upon this award, the Town (or City) Council of \_\_\_\_\_ (or the \_\_\_\_\_ County Commission) is soliciting proposals for management services to assist the Town (City or County) in the administration of this project in compliance with all applicable requirements under the Montana TSEP as described in the current edition of the Montana TSEP Project Administration Manual. Payment terms will be negotiated with the selected offeror. The fee for project management services will be paid with TSEP funds.

The services to be provided will include:

1. Preparing all written reports, checklists, or legal notices required to assure compliance with state environmental requirements;
2. Drafting a management plan and contract for review and approval by the Department of Commerce;
3. Establishing and maintaining project files and preparing all documentation and reports required for administration of the grant;
4. Assisting the Town (City or County) with the selection of a project engineer, in conformance with applicable procurement requirements, including the preparation of a request for proposals;

5. Reviewing all proposed project expenditures to ensure their propriety and proper allocation to the project budget;
6. Participating in the preconstruction conference and periodic construction progress meetings;
7. Assuring compliance with all applicable labor standards requirements;
8. Attending Town (City) Council (County Commission) meetings to provide project status reports and representing the TSEP project at any other public meetings deemed necessary; and
9. Preparing all required performance reports and closeout documents and assisting the Town (City or County) with the determination of applicable audit requirements.

The services will not include the disbursement or accounting of funds distributed by the Town's (City's or County's) financial officer, legal advice, fiscal audits, or assistance with activities not related to the TSEP project.

Responses should include:

1. the firm's legal name, address, and telephone number;
2. the principal(s) of the firm and their experience and qualifications;
3. the experience and qualifications of the staff to be assigned to the project;
4. a description of firm's prior experience, including any similar projects, size of community, location, total construction cost, and name of local official knowledgeable regarding the firm's performance. Include at least three references;
5. a description of the firm's current work activities, how these would be coordinated with the project, and the firm's anticipated availability during the term of the project; and
6. the proposed work plan and schedule for activities to be performed.

Respondents will be evaluated according to the following factors:

- |    |  |      |
|----|--|------|
| A. | Quality of the Proposal  | ___% |
| B. | Consultant Qualifications and Experience<br>(including reference checks) | ___% |

C. Availability and Capacity of the Consultant

\_\_\_%

**(Note:** The evaluation factors listed above are only examples. Local officials should include any factors that they believe are appropriate to the work tasks to be involved, with relative weightings for each according to their priority.

The selection of finalists to be interviewed will be based on an evaluation of the written responses. The award will be made to the most qualified offeror whose proposal is deemed most advantageous to the \_\_\_\_\_ (Town, City, or County), all factors considered. Unsuccessful offerors will be notified in writing as soon as possible.

Questions and responses should be directed to Mayor (Commissioner) \_\_\_\_\_, P.O. Box \_\_\_\_\_, \_\_\_\_\_, Montana, \_\_\_\_\_ (zip). All responses must be postmarked no later than \_\_\_\_\_ (date). Please state "TSEP Management Services Proposal" on the outside of the response package.

Respondents may review the TSEP application, which includes a description of the proposed project including activities, budget, schedule, and other pertinent information by visiting the \_\_\_\_\_ (Town, City or County) offices during regular office hours. A copy of the application is also available for review at the offices of the Community Development Division, Montana Department of Commerce, 301 S. Park Ave., Helena, MT 59620

This solicitation is being offered in accordance with state requirements governing procurement of professional services. Accordingly, the \_\_\_\_\_ (Town or City Council or County Commission) reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.



## EXHIBIT 3-D

### SAMPLE FORMAT FOR REQUEST FOR PROPOSALS FOR ENGINEERING SERVICES

(Note: The following is intended only as an example of a format which may be used to issue an Requests for Proposals (RFP) for engineering services. TSEP recipient's should consider the content of their RFP's very carefully before they are issued. In particular, local officials should exercise care in drafting the scope of services and the factors to be used in evaluating proposals to assure that they are both complete and appropriate for your community and project. See also Exhibit 3-E for a sample format for advertising the availability of the RFP).

The \_\_\_\_\_ (Town or City of \_\_\_\_\_ or \_\_\_\_\_ County) has been awarded a Treasure State Endowment Program (TSEP) grant in the amount of \$ \_\_\_\_\_ by the Montana Legislature for \_\_\_\_\_ (description of project including purpose, location, time frame, and present status).

Contingent upon this award, the Town (or City) Council of \_\_\_\_\_ (or the \_\_\_\_\_ County Commission) is soliciting proposals for engineering services to assist the Town (City or County) in designing and supervising construction of this project in compliance with all applicable requirements under the Montana TSEP Program. Payment terms will be negotiated with the selected offeror. The fee for engineering services will be paid with TSEP funds.

The services to be provided will include:

- ☐ designing system improvements and construction engineering;
- ☐ preparing the construction bid package in conformance with applicable TSEP requirements and supervising the bid advertising, tabulation, and award process, including preparing the advertisements for bid solicitation, conducting the bid opening, and issuing the notice to proceed;
- ☐ conducting the preconstruction conference;
- ☐ field staking, on-site supervising of construction work, and preparing inspection reports;
- ☐ reviewing and approving all contractor requests for payment and submitting approved requests to the governing body;
- ☐ providing reproducible plan drawings to the Town (City or County) upon project completion;
- ☐ conducting final inspection and testing;
- ☐ submitting certified "as built" drawings to the Montana Department of Health and Environmental Science; and
- ☐ preparing an operation and maintenance manual.

Responses should include:

1. the firm's legal name, address, and telephone number;
2. the principal(s) of the firm and their experience and qualifications;
3. the experience and qualifications of the staff to be assigned to project;
4. a description of the firm's prior experience, including any similar projects (in particular those funded by TSEP), size of community, location, total construction cost, and name of a local official knowledgeable regarding the firm's performance;
5. a description of the firm's current work activities and how these would be coordinated with the project, as well as the firm's anticipated availability during the term of the project; and
6. the proposed work plan and schedule for activities to be performed.

Respondents will be evaluated according to the following factors:

1. Overall Quality of the Proposal \_\_\_\_\_%
2. Consultant Qualifications and Experience \_\_\_\_\_%  
(including reference checks)
3. Availability and Capacity of the Consultant \_\_\_\_\_%  
to Respond

**(Note:** The evaluation factors listed above are only examples. Local officials should include those factors, which they believe are appropriate to the work tasks to be involved, with relative weightings for each according to their priority.)

The selection of finalists to be interviewed will be based on an evaluation of the written responses. The award will be made to the most qualified offeror whose proposal is deemed most advantageous to the \_\_\_\_\_ (Town, City, or County), all factors considered. Unsuccessful offerors will be notified as soon as possible.

Questions and responses should be directed to Mayor (Commissioner) \_\_\_\_\_, P.O. Box \_\_\_\_\_, \_\_\_\_\_, Montana, \_\_\_\_\_ (zip). All responses must be postmarked no later than \_\_\_\_\_ (date). Please state "TSEP Engineering Services Proposal" on the outside of the response package.

Respondents may review the TSEP application, which includes a description of the proposed project including activities, budget, schedule, and other pertinent information by visiting the \_\_\_\_\_ (Town, City or County) offices during regular office hours. A copy of the application is also available for review at the offices of the Community Development Division, Montana Department of Commerce, 301 S. Park Ave., Helena, MT 59620-0523.

This solicitation is being offered in accordance with state statutes governing procurement of professional services. Accordingly, the \_\_\_\_\_ (Town or City Council or

County Commission) reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.



## EXHIBIT 3-E

### SAMPLE FORMAT FOR ADVERTISING THE AVAILABILITY OF A REQUEST FOR PROPOSALS (SHORT FORM)

(Note: In order to reduce the cost of publicizing a Request for Proposals (RFP), local officials may use a format such as the following to advertise the availability of a request for proposals for engineering and/or grant administration services in lieu of publishing the entire text of the RFP. If this approach is used, local officials should be sure to allow sufficient time for consultants to request and receive a copy of the RFP and to prepare a response).

The \_\_\_\_\_ (name of TSEP recipient) has been awarded a Treasure State Endowment Program (TSEP) grant in the amount of \$\_\_\_\_\_ by the Montana Legislature for \_\_\_\_\_  
\_\_\_\_\_ (description of project).

Contingent upon this award, the Town (or City) Council of \_\_\_\_\_ (or \_\_\_\_\_ County Board of Commissioners) is requesting proposals for engineering services to assist the governing body in designing and supervising the construction of this project (or "proposals for management services to assist the \_\_\_\_\_ (name of TSEP recipient) in the administration of this project") in compliance with all applicable requirements under the Montana TSEP.

Copies of the detailed request for proposals (RFP), including a description of the services to be provided by respondents, the minimum content of responses, and the factors to be used to evaluate the responses, can be obtained by contacting \_\_\_\_\_ (name, address, and telephone). All responses to the detailed RFP must be submitted by \_\_\_\_\_ (date).



## EXHIBIT 3-F

### SAMPLE SELECTION CRITERIA FOR EVALUATING CONSULTANT PROPOSALS

CONSULTANT \_\_\_\_\_

#### RANKING FACTORS

##### 1. QUALITY OF THE PROPOSAL

- a. Does the proposal respond comprehensively to the tasks outlined in the request for proposals (RFP)? **Comments:**
- b. Does the proposal reflect a good understanding of the technical issues involved in the project? **Comments:**
- c. Does the proposal indicate an understanding of the requirements that must be complied with for a TSEP project (and the other state and/or federal funding sources involved)? What experience has the firm had dealing with state or federal grant or loan programs? What experience has the firm had with lending institutions or financial consultants? What experience has the firm had helping communities get financing from commercial sources (banks, bond sales)? **Comments:**
- d. Has the consultant provided a clear description of how the work will be managed and how the consultant will coordinate with local officials and staff? How does the firm plan to handle public participation in this project? **Comments:**
- e. Has the consultant provided a step by step timetable for the work with milestones indicating when key tasks will be performed and by whom? Does the schedule appear complete and realistic? **Comments:**

## ENGINEERING ONLY:

- f. Did the proposal include more than one technical alternative? If so, do the alternatives appear appropriate to the community's location, size, and financial and physical constraints? **Comments:**
- g. Does the recommended alternative minimize long-term operation and maintenance costs? **Comment:**

## SCORE FOR QUALITY OF PROPOSAL:

- \_\_\_\_\_ BEST (200 POINTS)
- \_\_\_\_\_ ABOVE AVERAGE (150 POINTS)
- \_\_\_\_\_ AVERAGE (100 POINTS)
- \_\_\_\_\_ BELOW AVERAGE (50 POINTS)
- \_\_\_\_\_ POOR (0 POINTS)

## 2. CONSULTANT QUALIFICATIONS AND EXPERIENCE

- a. Does the consultant have experience with similar projects for similar sized communities? Which communities have they worked with in the recent past? **Comment:**
- b. Does the staff to be assigned to the project on a day-to-day basis have technical training and experience appropriate to the scope of work in the RFP? **Comment:**
- c. To what extent will qualified staff be available to supervise project staff on-site? Who will do the actual work on the engineering design and supervise construction? Does the firm use subcontractors for certain work? If so, which firms and for what work? **Comment:**
- d. If the consultant has done work previously for the community, how did they perform? **Comment:**

- e. How do previous clients rate the consultant's performance? What is the consultant's track record on similar projects for timely performance within original budgets? **Comment:**
- f. Are the reference checks supportive of the consultant's technical abilities and ability to work cooperatively with local officials? **Comment:**

**ENGINEERING ONLY:**

- g. Does the firm have experience in designing similar systems for similar sized communities? What types of systems has the firm actually recommended, designed and installed? When were they installed? How are these systems working? What were the estimated costs? What are the present operation and maintenance costs of these systems? **Comments:**
- h. What are the costs per dwelling served, the up-front assessments, and monthly user charges for the firm's most recent projects of a size and technology comparable to yours? **Comments:**
- i. Does the firm have any experience using technologies and maintenance programs that are different from what State agencies have traditionally accepted? Does the firm have the willingness and capability to utilize innovative or alternative technology where appropriate? **Comments:**
- j. How familiar is the firm with current laws and regulations? **Comments:**

- k. What experience does the firm have in working with State and Federal environmental and funding agencies? **Comments:**

SCORE FOR CONSULTANT EXPERIENCE AND QUALIFICATIONS:

- \_\_\_\_\_ BEST (200 POINTS)
- \_\_\_\_\_ ABOVE AVERAGE (150 POINTS)
- \_\_\_\_\_ AVERAGE (100 POINTS)
- \_\_\_\_\_ BELOW AVERAGE (50 POINTS)
- \_\_\_\_\_ POOR (0 POINTS)

3. AVAILABILITY AND CAPACITY OF THE CONSULTANT

- a. What is the current and projected workload of the consultant and how much time will the consultant have available to devote to the project? What projects is the firm now working on and what new ones may be starting soon? **Comments:**
- b. Where is the firm located? **Comments:**
- c. How much time will the firm's staff actually spend in the community on a day-to-day basis over the term of the project? **Comments:**
- d. Is the consultant capable of meeting the time and budget requirements for the project? What time schedule does the firm propose for completing the work? **Comment:**

SCORE FOR AVAILABILITY AND CAPACITY OF THE CONSULTANT:

- \_\_\_\_\_ BEST (100 POINTS)
- \_\_\_\_\_ ABOVE AVERAGE (75 POINTS)
- \_\_\_\_\_ AVERAGE (50 POINTS)
- \_\_\_\_\_ BELOW AVERAGE (25 POINTS)
- \_\_\_\_\_ POOR (0 POINTS)

DATE: \_\_\_\_\_

**Note:** The above factors and questions under them are examples which are designed to fulfill Montana's law regarding procurement of engineering, architectural, or surveying services. You may want to adapt your RFP, including your evaluation factors and system for awarding points, to the key issues involved in your project and the type of assistance you are seeking. If you modify the sample factors or questions, please keep in mind that Montana law (Section 18-8-204, MCA) sets out minimum criteria that should be considered for selection of architects, engineers, or surveyors. The factors involved in reviewing responses to an RFP for management services may be different from those involved in an RFP for engineering services.



## EXHIBIT 3-G

### SAMPLE FORMAT FOR A PROFESSIONAL SERVICES CONTRACT

**(NOTE: The contract clauses that are marked with an asterisk [\*]  
are required for all TSEP-funded contracts.)**

This Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the (City/Town/County of \_\_\_\_\_), Montana, herein referred to as the ("City/Town/County") and (name of Contractor), whose address is \_\_\_\_\_, herein referred to as the "Contractor," Witnesseth:

WHEREAS, the Montana Department of Commerce, herein referred to as "the Department," has awarded the (City/Town/County) grant funds under the Montana Treasure State Endowment Program (TSEP) for purposes of (description of project); and

WHEREAS, the (City/Town/County) desires to engage the Contractor to render certain services related to the administration of the above described TSEP project; and

WHEREAS, the (City/Town/County) has complied with state procurement requirements regarding the selection of contractors; and

WHEREAS, the (City/Town/County) desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of the project;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. EMPLOYMENT OF CONTRACTOR. The (City/Town/County) agrees to engage the Contractor, and the Contractor agrees to provide the following services in order to provide for the administration and management of the TSEP project for the (City/Town/County) as approved by the Department.
- \*2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and that neither its principals nor its employees, if any, are employees of the (City/Town/County) for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.
3. LIAISON. The (City's/Town's/County's) designated liaison with the Contractor is \_\_\_\_\_. The Contractor's designated liaison with the \_\_\_\_\_.

(City/Town/County) is \_\_\_\_\_.

- \*4. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on \_\_\_\_\_. The services to be performed by the Contractor will be completed no later than \_\_\_\_\_.

- \*5. SCOPE OF SERVICES. The Contractor will perform the following services:

(Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the contractor, including the timetable for completion of key tasks. Consult with your TSEP liaison as to the specific services that may be appropriate for each grant category.)

It is understood and agreed by the parties that the services of the Contractor do not include any of the following: the disbursement or accounting of funds distributed by the (City's/Town's/County's) financial officer, legal advice, fiscal audits or assistance with activities not related to the TSEP project.

- \*6. COMPENSATION. For the satisfactory completion of the services to be provided under this Contract, the (City/Town/County) will pay the Contractor a sum not to exceed \$\_\_\_\_\_ as in the manner set forth in the attached Exhibit \_\_\_\_\_, which by this reference is made a part of this Contract. Each specific service the Contractor will provide under this Contract, and the maximum amount that the (City/Town/County) will pay the Contractor for each of these services, is set forth in the attached Exhibit \_\_\_\_\_. The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Exhibit \_\_\_\_\_. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

- \*7. CONFLICT OF INTEREST. The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the TSEP project which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in performing this Contract, it will employ no person who has any such interest.

8. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Contractor may not subcontract or assign its rights, including the right

to compensation, or duties arising hereunder without the prior written consent of the (City/Town/County). Any subcontractor or assignee will be bound by all of the terms and conditions of this contract.

9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the (City/Town/County) of TSEP funds from the Department and that in the event that said funds are not provided, the (City/Town/County) incurs no responsibilities or liabilities under this Contract.

- \*10. TERMINATION OF CONTRACT. This Contract may be terminated as follows:

- (a) Termination due to loss of funding. This Contract will terminate, in whole or in part, at the discretion of the (City/Town/County) in the event that the Department reduces or terminates payments under the TSEP so as to prevent the (City/Town/County) from paying the Contractor with TSEP funds. In this event, the (City/Town/County) will give the Contractor advance written notice which sets forth the effective date of the termination and explain that the termination is due to a loss or reduction of the TSEP grant.
- (b) Termination for cause.
  - (i) If, at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Contract, the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be specified in the notice, the aggrieved may, with no further notice, declare this Contract to be terminated in whole or in part.
  - (ii) If the Contractor is the defaulting party, it will thereafter be entitled to receive payment for those services satisfactorily performed to the date of termination less the amount of reasonable damages suffered by the (City/Town/County) by reason of the Contractor's failure to comply with the contract's terms and conditions.
  - (iii) If the (City/Town/County) is the defaulting party it will pay the Contractor for those services satisfactorily performed to the date of termination plus the amount of reasonable damages suffered by the Contractor by reason of the (City/Town/County's) failure to comply with the contract's terms and conditions.
  - (iv) Notwithstanding the above, the defaulting party is not relieved of liability to

the aggrieved party for damages sustained by the aggrieved party by virtue of any breach of this contract.

- (v) If the Contractor is the defaulting party, the (City/Town/County) may withhold any payments to the Contractor for purposes of setoff until the exact amount of damages due the (City/Town/County) from the Contractor is determined.

- \*11. DOCUMENTS INCORPORATED BY REFERENCE. THE (City's/Town's/County's) application to the Department for TSEP funding, dated \_\_\_\_\_, 19\_\_, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Contractor.
- \*12. NONDISCRIMINATION. The Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
- \*13. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the (City/Town/County) and the Department which have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the (City/Town/County) and the Department.
- \*14. REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the (City/Town/County) to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the (City/Town/County) or its authorized representative, and will be retained for five years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the (City/Town/County).
- \*15. ACCESS TO RECORDS. It is expressly understood that the Contractor's records relating to this Contract will be available during normal business hours for inspection by the (City/Town/County), the Department, and, when required by law, the Montana Legislative Auditor.
- \*16. PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE. The parties

understand and agree that performance of this contract is in the  
(City/Town/County) of (Name of City/Town/County) and that in the event of  
litigation concerning it, venue is the \_\_\_\_\_ Judicial District in and for the  
County of \_\_\_\_\_, State of Montana.

This Contract will be construed under and governed by the laws of the State of  
Montana.

17. **INDEMNIFICATION.** The Contractor waives any and all claims and recourse  
against the (City/Town/County), including the right of contribution for loss and  
damage to persons or property arising from, growing out of, or in any way  
connected with or incidental to the Contractor's performance of this contract  
except for liability arising out of concurrent or sole negligence of the  
(City/Town/County) or its officers, agents or employees. Further, the Contractor  
will indemnify, hold harmless, and defend the (City/Town/County) against any  
and all claims, demands, damages, costs, expenses or liability arising out of the  
Contractor's performance of this Contract except for liability arising out of the  
concurrent or sole negligence of the (City/Town/County) or its officers, agents or  
employees.
18. **LEGAL FEES.** In the event either party incurs legal expenses to enforce the  
terms and conditions of this Contract, the prevailing party is entitled to recover  
reasonable attorney's fees and other costs and expenses, whether the same are  
incurred with or without suit.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on

the \_\_\_\_\_ day of \_\_\_\_\_.

CONTRACTOR

CITY/TOWN/COUNTY OF \_\_\_\_\_

BY: \_\_\_\_\_  
Contractor

BY: \_\_\_\_\_  
Official Representative  
of the (City/Town/County)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



## EXHIBIT 3-H

### SAMPLE SUPPLEMENTAL CONDITIONS TO STANDARD ARCHITECTURAL AND/OR ENGINEERING CONTRACTS

(Note: The contract clauses below that are marked with an asterisk [\*] are required in all TSEP-funded Architect and/or Engineer contracts. If not included within the contract, they must be added as a supplement to the contract.)

The following Supplemental Conditions are hereby made a part of the contract to which they are appended supplementing that contract and superseding any of its articles of which they are in conflict.

1. LIAISON. The (City's/Town's/County's designated liaison with the Architect and/or Engineer is \_\_\_\_\_. The Architect and/or Engineer's designated liaison with the \_\_\_\_\_ (City/Town/County) is \_\_\_\_\_.
- \*2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Architect and/or Engineer is an independent contractor and as such neither it nor its employees, if any, are employees of the \_\_\_\_\_ (City/Town/County) for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Architect and/or Engineer has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.
3. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Architect and/or Engineer may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the \_\_\_\_\_ (City/Town/County). Any subcontract or assignee will be bound by the terms and conditions of this contract.
- \*4. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on \_\_\_\_\_. The services to be performed by the Contractor will be completed no later than \_\_\_\_\_.
- \*5. COMPENSATION. For the satisfactory completion of the services to be provided under this Contract, the \_\_\_\_\_ (City/Town/County) will pay the Architect and/or Engineer a

sum not to exceed \$\_\_\_\_\_ as in the manner set forth in the attached Exhibit \_\_\_\_\_, which by this reference is made a part of this contract. Each specific service the Architect and/or Engineer will provide under this contract, and the maximum amount that the (City/Town/County) will pay the Architect and/or Engineer for each of these services, is set forth in the attached Exhibit \_\_\_\_\_. The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Exhibit \_\_\_\_\_. The Architect and/or Engineer may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

- \*6. SCOPE OF SERVICES. The Architect and/or Engineer will perform the following services:

(Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the Architect and/or Engineer, including the timetable for completion of key tasks. Consult with your TSEP liaison as to the specific services that may be appropriate for each grant category.)

It is understood and agreed by the parties that the services of the Architect and/or Engineer do not include any of the following: the disbursement or accounting of funds distributed by the (City's/Town's/County's) financial officer, legal advice, fiscal audits or assistance with activities not related to the TSEP project.

7. PRECONSTRUCTION CONFERENCE. After the construction contract(s) for the project contemplated by this Contract have been awarded, but before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements which apply to projects funded in whole or in part through the Treasure State Endowment Program (TSEP). Additionally, discussions will take place on such matters as project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The Architect and/or Engineer may be responsible for conducting this conference.
8. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the (City/Town/County) of TSEP funds from the Department and that in the event that said funds are not provided, the (City/Town/County) incurs no responsibilities or liabilities under this Contract.

\*9. TERMINATION OF CONTRACT. This Contract may be terminated as follows:

- (a) Termination due to loss of funding. This Contract will terminate, in whole or in part, at the discretion of the (City/Town/County) in the event that the Department reduces or terminates payments under TSEP so as to prevent the (City/Town/County) from paying the Architect and/or Engineer with TSEP funds. In this event, the (City/Town/County) will give the Architect and/or Engineer advance written notice which sets forth the effective date of the termination and explain that the termination is due to a loss or reduction of the TSEP grant.
- (b) Termination for cause.
  - (i) If the (City/Town/County) determines that the Architect and/or Engineer has failed to comply with the terms and conditions of the Contract, it may terminate this Contract in whole or in part at any time before the date of completion. If the Architect and/or Engineer fails to comply with any of the terms and conditions of this Contract, the (City/Town/County) may give notice, in writing, to the Architect and/or Engineer of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period to be specified in the notice, (City/Town/County) may, with no further notice, declare this Contract to be terminated. The Architect and/or Engineer will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the (City/Town/County) by reason of the Architect and/or Engineer's failure to comply with this Contract.
  - (ii) Notwithstanding the above, the Architect and/or Engineer is not relieved of liability to the (City/Town/County) for damages sustained by the (City/Town/County) by virtue of any breach of this Contract by the Architect and/or Engineer, and the (City/Town/County) may withhold any payments to the Architect and/or Engineer for the purpose of setoff until such time as the exact amount of damages due the (City/Town/County) from the Architect and/or Engineer is determined.

\*10. CONFLICT OF INTEREST. The Architect and/or Engineer covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the TSEP project which would conflict in any manner or degree with the performance of its services hereunder. The Architect and/or Engineer further covenants that, in the performing this Contract, it will employ no person who has any such interest.

\*11. NONDISCRIMINATION. The Architect and/or Engineer will not discriminate against any employee or applicant for employment on the basis of race, color, religion,

creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

- \*12. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Architect and/or Engineer pursuant to this Contract are to be the property of the (City/Town/County) and the Montana Department of Commerce which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Architect and/or Engineer for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Architect and/or Engineer. No material produced in whole or part under this Contract shall be subject to copyright or patent in the United States or in any other country without the prior written permission of the (City/Town/County) and the Montana Department of Commerce.
- \*13. REPORTS AND INFORMATION. The Architect and/or Engineer will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the (City/Town/County) to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the (City/Town/County) or its authorized representative, and will be retained for five years after the expiration of this Contract unless permission to destroy them is granted by the (City/Town/County).
- \*14. ACCESS TO RECORDS. It is expressly understood that the Architect and/or Engineer's records relating to this Contract will be available during normal business hours for inspection by the (City/Town/County), the Department, and, when required by law, the Montana Legislative Auditor.
- \*15. CONSTRUCTION AND VENUE. This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the \_\_\_\_\_ Judicial District in and for the County of \_\_\_\_\_, State of Montana.
16. INDEMNIFICATION. The Architect and/or Engineer waives any and all claims and recourse against the (City/Town/County), including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the Architect and/or Engineer's performance of this contract except for liability arising out of concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees. Further, the Architect and/or Engineer will indemnify, hold harmless, and defend the (City/Town/County) against any and all claims, demands, damages, costs, expenses or liability arising out of the Architect and/or Engineer's performance of this Contract except for liability arising out of the concurrent or sole negligence of the (City/Town/County) or

its officers, agents or employees.

17. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the \_\_\_\_\_ day of \_\_\_\_\_.

ARCHITECT/ENGINEER

CITY/TOWN/COUNTY  
OF \_\_\_\_\_

BY:

BY:

\_\_\_\_\_  
Architect/Engineer

\_\_\_\_\_  
Official Representative of the  
(City/Town/County)

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



## EXHIBIT 3-I

### CHECKLIST OF REQUIRED CONTRACT CLAUSES FOR PROFESSIONAL SERVICES/ENGINEER'S CONTRACTS

An asterisk (\*\*) indicates clauses that are required in every TSEP-funded professional services/engineer's contracts.

- \_\_\_1. EMPLOYMENT OF CONTRACTOR
- \_\_\_2. INDEPENDENT CONTRACTOR \*\*
- \_\_\_3. LIAISON
- \_\_\_4. EFFECTIVE DATE AND TIME OF PERFORMANCE \*\*
- \_\_\_5. SCOPE OF SERVICES \*\*
- \_\_\_6. COMPENSATION \*\*
- \_\_\_7. CONFLICT OF INTEREST \*\*
- \_\_\_8. MODIFICATION AND ASSIGNABILITY OF CONTRACT
- \_\_\_9. CONDITIONAL AGREEMENT
- \_\_\_10. TERMINATION OF CONTRACT \*\*
- \_\_\_11. DOCUMENTS INCORPORATED BY REFERENCE \*\* (N/A for engineering)
- \_\_\_12. NONDISCRIMINATION \*\*
- \_\_\_13. OWNERSHIP AND PUBLICATION OF MATERIALS \*\*
- \_\_\_14. REPORTS AND INFORMATION \*\*
- \_\_\_15. ACCESS TO RECORDS \*\*
- \_\_\_16. PLACE OF PERFORMANCE, CONSTRUCTION AND VENUE \*\*
- \_\_\_17. INDEMNIFICATION
- \_\_\_18. LEGAL FEES



## EXHIBIT 3-J

### EXAMPLE OF A CONSULTANT'S INVOICE

Delaney Water System  
Aim-To-Pleasure Staff Project Hours  
October 1 - 31, 1998

<u>Staff</u>	<u>Hours</u>	<u>Activity</u>
Withrow	.5	Meeting at the tank site to update the engineer (50 travel miles)
Withrow	2.0	Prepare drawdown #3 and progress report
Sampson	1.0	Prepare planning maps for the District
Withrow	1.0	Review acquisition with engineers
Withrow	2.0	Prepare drawdown #4 and progress report
Sampson	3.0	Meeting with reservoir site owners to discuss acquisition
Withrow	2.0	Attend city council meeting to update council on acquisition and present project invoices for approval

Total Hours: Withrow     7.5  
                    Sampson     4.0

Withrow	7.5 hours @ \$30/hour	\$225.00
Sampson	4.0 hours @ \$16/hour	\$ 64.00

Travel to Delaney tank site (50 mi. @ \$.325/mi.)     \$ 16.00

Total for Month     \$305.00







## CHAPTER 4

### FINANCIAL MANAGEMENT

#### OVERVIEW

This chapter provides information about the financial management of the project including: expenses eligible for reimbursement, eligible match, and what is required to receive your TSEP funds. It also provides details about setting up an accounting system that conforms to generally accepted accounting principles and the audit requirements under state law.

#### A. APPLICABLE STATE STATUTES

1. Treasure State Endowment Program Authorized (Section 90-6-7, MCA)

The passage of Legislative Referendum 110, by Montana voters on June 2, 1992, authorized the Treasure State Endowment Program (TSEP).

2. Funding for Projects by the 2003 Legislative Session (House Bill 11)

House Bill 11 authorized grant funding for 40 local public facility projects through TSEP, with three additional projects authorized if sufficient funds become available.

3. County Water and Sewer Districts and Solid Waste Districts Authorized to Apply for TSEP Assistance (Section 90-6-701(3)(b), MCA)

This statute authorized county water and sewer districts and solid waste districts to apply for TSEP assistance and authorized MDOC to borrow funds from the Montana Board of Investments to fund the TSEP projects approved in 1993.

4. Tribal Governments Authorized to Apply for TSEP Assistance (Section 90-6-701(3)(b), MCA)

The 1999 Legislature added tribal governments to the list of eligible applicants that could apply for TSEP assistance.

5. Budgetary, Accounting and Reporting Systems (BARS) for Cities, Counties, Towns and Special Districts (Section 2-7-504, MCA)

This statute requires all local governments to establish financial management systems that conform to Generally Accepted Accounting Principles (GAAP). The BARS system, required by Montana law, fulfills all GAAP project accounting and

reporting requirements (Section 2-7-504, MCA).

6. Appropriation power -- requirements (Section 7-6-4006, MCA)

This statute provides for the appropriation of money and the payment of the debts and expenses of the local government.

7. Surety Bonds

Montana law requires surety bonds for county, city and town officers and employees who are involved in the administration of public funds. The amount of a bond should be based on the amount of money handled and the opportunity for defalcation (Sections 2-9-701, 2-9-702 and 2-9-802, MCA).

Under Montana law, performance bonds for county water and sewer district administrative personnel is discretionary (Section 7-13-2279, MCA). The law is silent on performance bond requirements for solid waste district personnel.

**B. TSEP REQUIREMENTS**

1. Project Budget

The project budget is part of the TSEP contract. Before TSEP funds can actually be provided to a local government, there are specific requirements related to the project budget that must be met by the TSEP recipient.

- a. **The TSEP recipient must appropriate, by resolution, the grant or loan money received from MDOC.** The resolution must state the source of the money, the program in which money will be expended and the effective date of the resolution. If the TSEP funds have been appropriated as part of the annual budget process, a separate resolution is not required. (See Exhibit 4-A for a sample budgetary resolution format.)
- b. The TSEP recipient must expend the grant money in accordance with the provisions of the project budget. However, the TSEP portion of the project budget may be amended so long as it is not increased and does not violate the conditions under which the grant money was awarded. The TSEP recipient must request approval for all budget amendments from MDOC. **Any budget amendment that is \$5,000 or more must be approved in advance. Budget amendments under \$5,000 can be submitted with a drawdown request. Upon approval of the request, the TSEP recipient is required to pass a new resolution showing the amended project budget.**

The preparation, content and approval of the project budget is dealt with in Chapter 1, as well as issues related to amending budgets or contracts. Please consult Chapter 1 for related information.

## 2. Project Expenses Eligible for Reimbursement

Eligible project expenses that can be reimbursed with TSEP funds, are those reasonable expenses incurred after a TSEP contract has been signed, that directly relate to the planning, design, construction, erection, acquisition, site or other improvements, alteration, modernization, reconstruction, or expansion of the infrastructure type projects listed below:

- a. Drinking water systems;
- b. Wastewater treatment;
- c. Sanitary sewer or storm sewer systems;
- d. Solid waste disposal and separation systems, including site acquisition, preparation or monitoring; or
- e. Bridges.

Some specific project expenses that are also eligible for reimbursement with TSEP funds include: connection charges (hook-up fees and connection costs), water meters, and meter installation.

**Only those project expenses that have been incurred after a TSEP contract has been signed are eligible for reimbursement with TSEP funding.** However, reasonable expenses incurred attending the TSEP Project Administration Workshop are also eligible for reimbursement, even though they may have been incurred prior to a TSEP contract being signed. If the local government has contracted with a consultant to administer the grant and the consultant is also going to administer other TSEP grants, the consultant must proportionately allocate the cost of attending the workshop between the projects being represented.

Administration expenses are also eligible for reimbursement as long as they are reasonable and appropriate administrative and financial costs that are attributable to a TSEP project.

The purchase of computer software, that is necessary to utilize the various TSEP forms and spreadsheets on a computer, is an eligible administration cost. In addition, TSEP will also allow computer hardware as an eligible administration cost if it is required to run the software or needed to otherwise manage the TSEP project; however, MDOC will only reimburse up to 50% of the cost of the computer or computer software.

**Project administration costs must be accounted for on a direct cost basis.** Direct costs are those costs that can be identified specifically with a particular cost objective (a specific cost center established to record the accumulation of costs). Direct administration costs that may be eligible for reimbursement are those costs that can be associated directly with the project. For instance, compensation of employees working directly on the project, or auditing expenses directly related to the project, may be eligible for reimbursement. However, the TSEP recipient must be able to adequately document that the costs are directly associated with the project, such as with employee timesheets showing hours spent working on the project.

**In-direct costs are not eligible project costs.** An example of an indirect cost would be claiming a personnel expense based on a fixed percent of an employee's time or pay, which may or may not reflect the actual hours worked on the project. A timesheet reporting actual hours spent working on the project is required to make this claim eligible for reimbursement.

Bond issuance costs and bond interest costs that are attributable to a TSEP project are also an eligible administration/financial expense. However, under current accounting standards, such bond-related costs may require special accounting treatment. For example:

**Bond Issuance Costs -**

For governmental funds, bond issuance costs are recognized in the current period. However, significant bond issue costs for enterprise funds should be recorded as deferred charges and amortized over the life of the issue. (For a complete discussion on the subject, including illustrative examples, please refer to pages D-32 to D-36 of the (LGS) Accounting Policies.)

**Bond Interest Costs -**

When a local government chooses to construct a fixed asset, a primary accounting consideration is determining the capitalized costs associated with the construction. Capitalized costs are those costs associated with the project that will be treated as an asset. Traditionally, capitalized costs have

not included interest costs. In accounting, the issue of whether to expense or capitalize an outlay is resolved by using the "principle of materiality," which suggests that any outlays deemed material (i.e. large) relative to the total cost of the construction project should be capitalized. Therefore, the capitalization of interest is required during the construction phase for qualifying assets if its effect, compared with the effect of expensing interest is material. If the net effect is not material, then interest capitalization is not required.

This accounting standard applies to all enterprise funds. The application of this standard to assets that are reported in the General Fixed Assets Account Group (GFAAG) appears optional. However, it left open the question of interest capitalization when capital project's funds are used for construction undertaken on behalf of an enterprise fund. (For a complete discussion on the subject, including illustrative examples, please refer to pages B-6 and 7 and D-23 to D-27 of the Accounting Policies Manual, provided by the Local Government Services Bureau, Montana Department of Administration.)

### 3. Ineligible Expenses

Project expenses that cannot be reimbursed with TSEP funds include:

- a. Direct financial assistance for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under the control of the state;
- b. Annual operation and maintenance;
- c. Purchase of non-permanent furnishings and fixtures or equipment that is not permanently installed in and solely dedicated to the operation of a public facility. However, as discussed earlier, a portion of the cost to purchase a computer and the required software may be considered an eligible cost, even though it may be used for general governmental operations;
- d. Refinancing existing debt, except when required in conjunction with the financing of a new TSEP project; and
- e. **Any unauthorized costs incurred prior to a signed TSEP contract between the TSEP recipient and MDOC.**

### 4. Eligibility of Matching Funds

Matching funds must be provided by the applicant to assist in financing the total project cost. "Matching Funds" are public or private funds to be provided by a TSEP

applicant to directly support the costs of eligible project activities.

Eligible types of matching funds include:

- a. local general funds or other cash;
- b. proceeds from the sale of general obligation, revenue, special assessment or other bonds;
- c. entitlement or formula-based federal or state funds such as federal highway funds or payments in lieu of taxes;
- d. loan or grant funds from a state or federal program (including TSEP loans);
- e. funds expended for engineering studies, reports, and plans, or other reasonable expenses expended for the preparation of the application, directly related to the proposed project during the period 24 months prior to the TSEP application deadline, i.e., May 5, 2000 to May 4, 2002;
- f. funds expended after the TSEP application deadline, May 4, 2002, for project management, final engineering design, and other reasonable expenses necessary to prepare the project as proposed in the TSEP application for the construction phase;
- g. the value of land or materials provided by the applicant, if appraised within a two-year period preceding the application deadline. The appraisal must be:
  - (i) an impartially written statement that adequately describes the land or materials, and states an opinion of defined value as of a specific date;
  - (ii) supported by an analysis of relevant market information; and
  - (iii) prepared by a qualified appraiser independent from the applicant.
- h. the value of labor performed by the applicant's employees on the proposed project, after the TSEP project has been approved for funding and a TSEP contract has been signed, as long as the employee is paid at his or her standard hourly rate of pay and the time worked is adequately documented; and
- i. the value of machinery used in the process of constructing the project that is owned (or leased) and operated by the applicant. The value of the use of the machinery will be determined using the Federal Emergency Management Agency (FEMA) equipment rate schedules.

Ineligible matching funds include:

- a. Land, materials or services that cannot accurately and fairly be assigned a uniform monetary value.
- b. Funds expended on a project before it is approved for funding by the Legislature and Governor except as noted above.

5. Depository for Project Funds

**TSEP grant and/or loan funds received by the TSEP recipient must be deposited in a bank depository**, however, they do not have to be deposited into a bank depository separate from the recipient's regular bank account. They may be placed in any one of the TSEP recipient's common treasury depositories. However, **TSEP funds must be accounted for in a separate project cash account within the appropriate fund type's set of self-balancing accounts.**

6. Disbursement of TSEP Grant Funds

TSEP funds are appropriated by the Montana Legislature for a two-year period or "biennium." Local governments approved for TSEP funding are funded with revenues obtained from the interest earned on the Treasure State Endowment Fund during the biennium. **TSEP recipients that are guaranteed funding must meet the start-up requirements prior to the end of the biennium in order to maintain that guarantee.** If a TSEP recipient with guaranteed funding meets the start-up requirements prior to the end of the biennium, and there are insufficient TSEP revenues during the biennium, the TSEP recipient will be funded from revenues from the next biennium. **TSEP recipients that do not complete their project start-up requirements before the end of the biennium could risk the possibility that they may not receive TSEP funds if revenues fall below projections during the biennium.**

HB 11 authorizes some projects for TSEP funding, but only if sufficient TSEP funds become available. If there are insufficient TSEP revenues during the biennium, those projects are not funded and are required to re-apply to the next Legislature for funding.

Because TSEP funds accumulate gradually as interest is earned on the Treasure State Endowment Fund over the two-year biennium period, sufficient funds are not always available to fund projects when local officials are ready to proceed. However, **TSEP funds are generally made available at the beginning of each month to projects that have completed the start-up requirements.** A "notice to proceed" letter will be sent notifying the local government that start-up requirements have

been satisfied, TSEP funds are available, and it can begin to draw down TSEP funds.

The start-up requirements include:

- a. Contract -- A contract has been signed between MDOC and the TSEP recipient. The contract must include the scope of work and a budget that describes how TSEP funds will be spent. The contract must also include a preliminary implementation schedule that describes when the different tasks of the project will take place. The scope of work, budget and implementation schedule must be approved by MDOC.
- b. Management Plan -- The TSEP recipient has prepared a management plan detailing which individuals will be responsible for various management activities and MDOC has approved the plan.
- c. In compliance with the auditing and reporting requirements -- The TSEP recipient is in compliance with the auditing and reporting requirements provided for in 2-7-503, and has established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments must comply with auditing and reporting requirements provided for in OMB Circular A-133 instead of 2-7-503.
- d. Firm Written Commitment of Matching Funds -- The TSEP recipient has obtained a firm written commitment from the appropriate funding agency clearly stating that local and other matching funds are immediately available, and the commitment has been approved by MDOC.
- e. Special Conditions -- The TSEP recipient has complied with any additional start-up requirements that were approved by the Legislature.

However, if the level of TSEP revenues used to pay project expenses becomes too low, MDOC may require projects that have met start-up requirements to wait until there are sufficient revenues again. In that case, MDOC will always start at the top of the priority ranking list as approved by the Legislature in order to offer available TSEP funds to the highest ranked projects that are ready to proceed. As a result, a project may be temporarily passed over for funding because the project had not completed start-up requirements, but this does not affect the project's eligibility to receive funds at a later date. Projects that have met start-up requirements and that are temporarily passed over for funding will have the opportunity to receive TSEP funding as revenues become available.

## 7. Project Drawdown Requests and Quarterly Reporting

The Request for Funds Form is used by TSEP recipient's to request TSEP funds for reimbursement of eligible project costs. The Project Progress Report is used by TSEP recipients both when requesting TSEP funds and when filing quarterly reports. The format and content of the TSEP Project Progress Report is described in Exhibit 4-C. Exhibit 4-D shows an example of a completed TSEP Project Progress Report.

### a. **Request For Funds Form**

**TSEP recipients can initiate a request for TSEP funds by preparing and submitting the Request for Funds Form (Exhibit 4-B).** A computer-generated report is also acceptable, so long as it contains the same information as the preprinted form. **Each request for TSEP funds must also be accompanied by a Project Progress Report (Exhibit 4-C)** which will provide MDOC with information on the use of the funds requested and the progress and status of the project. In addition, the TSEP recipient may need to provide additional documentation to support their claim for expenses to be reimbursed. A checklist is provided to ensure that the TSEP recipient has taken the proper steps necessary to process a request for funds (Exhibit 4-F).

The Request for Funds Form and accompanying Project Progress Report may be mailed to your TSEP staff liaison at the Department of Commerce, CDD/TSEP, 301 South Park Avenue, PO Box 200523, Helena, MT 59620-0523.

Upon receipt, the TSEP staff liaison for your project will review your request to ensure that the form is properly completed and all of the accompanying attachments have been included.

- (1) **In addition to submitting the Request For Funds Form and the Project Progress Report, the TSEP recipient must provide the following supporting documentation:**
  - (a) **A copy of the Uniform Status of Funds Spreadsheet showing the current budget for the project and status of all funds involved in the project.** (See Exhibit 4-G for the spreadsheet and instructions on how to use it, and Exhibit 4-H for a sample of a completed spreadsheet.)
  - (b) **A current copy of the Uniform Invoice Tracking Spreadsheet showing invoices received to date.** (See Exhibit 4-I for the

spreadsheet and instructions on how to use it, and Exhibit 4-J for a sample of a completed spreadsheet.) Once a page(s) is complete it does not need to be submitted again unless requested.

The TSEP recipient has the option of using the invoice tracking spreadsheet to record all invoices, which will make the spreadsheet reconcilable to the status of funds spreadsheet and other accounting records. **At a minimum, the TSEP recipient must record all invoices from a consultant grant administrator, project engineer and construction contractor.**

- (c) **Copies of invoices, purchase orders, lease agreements, acquisition agreements, etc, when the amount of the TSEP portion of each individual expenditure is \$5,000 or more.** All expenditures that have been paid in part or totally from TSEP funds, regardless of the amount, must be itemized in the Project Progress Report.

All invoices from contractors providing professional services, such as grant administrators and engineers, must itemize the work performed and include a narrative description in sufficient detail to justify the amount claimed. At a minimum, the contractor must include an itemized description of work performed, number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period and the total amount being billed.

- (d) **Completed Certification of Labor Compliance form.** Form must be completed for any request of funds relating to construction contracts. See Exhibit 4-K for a copy of the form.
- (e) Copies of timesheets or other summary payroll information for work performed by city or county employees. Summary information must include at a minimum the name, title, time period, activities performed, and total amount.
- (f) If the TSEP liaison has any questions concerning the appropriateness or amount of an expenditure, copies of more detailed supporting documentation may be required.
- (2) The TSEP recipient can only be reimbursed for project costs that have actually been incurred.

- (3) If the TSEP recipient is constructing multiple unrelated projects at the same time using a single contractor, the invoice and related documentation submitted with the Request for Funds Form must be separate from the other project(s) so that the claim is clearly distinct for the project funded by TSEP funds. For example, a city is constructing both a water and sewer project using the same contractor, and only the sewer project is being funded in part by TSEP funds, the city must provide an invoice showing expenses just for the sewer project. Expenses for the water project must be on a separate invoice.
- (4) The TSEP staff will review both the Request For Funds Form and the Project Progress Report and check:
  - (a) The contract number, addresses and bank account number for correctness;
  - (b) The reasonableness of the amount requested. Expenditures must be appropriate based upon the description offered for both administration and project activity costs. The amount requested must be consistent with the approved contract budget and the project progress report;
  - (c) The eligibility of all costs and their consistency with the contract scope of services;
  - (d) Financial numbers for correctness;
  - (e) The expended to date balances for consistency with the preceding request for payment;
  - (f) The percentage of the administration and activity budgets expended, the total amount drawn to date against the amount budgeted and the amount of TSEP funds on hand; and
  - (g) Correctness of signatures against the authorized signature form.
- (5) If the information is satisfactory, the TSEP staff will sign the request.
- (6) If the information is unsatisfactory, the TSEP recipient will be notified of any deficiencies. Depending on the nature of the deficiencies, the TSEP recipient may be required to submit a new request.

Once the request for payment is approved, the TSEP funds will be sent directly to the TSEP recipient's bank depository. The turn-around time for receipt of funds

may be up to fifteen (15) working days after receiving a satisfactory drawdown request.

To expedite routine drawdowns, the TSEP recipient should consider the use of a master form in the preparation of the Request for Funds Form. The master would be headed up with only that information which is fixed and must appear on every drawdown. It is then just a matter of taking a photocopy of the master each time and entering the information that pertains to the current drawdown. Standard information is not repeated for each drawdown and a new master would only have to be prepared in the case of budget amendments.

#### **b. Quarterly Reporting Requirements**

**The TSEP recipient is required to submit a Project Progress Report each calendar year quarter unless the TSEP recipient has submitted a request for funds to TSEP at some point during the quarter.** The Project Progress Report is required within fifteen (15) days following the close of each quarter. When the TSEP recipient is submitting a Project Progress Report to satisfy the quarterly report requirement, the TSEP recipient only needs to include an update to the project status section of the Project Progress Report.

#### **c. Retainage**

**The Department will retain two percent (2%) of the total authorized grant amount until:**

- **the project has been completed (a Certificate of Substantial Completion has been issued), and**
- **a conditional closeout report has been submitted by the TSEP recipient and approved by the Department.**

This amount will be withheld at the end of the project as compared to each request for funds. Once a conditional closeout has been submitted and approved by the Department, the two percent (2%) retainage will be released to the TSEP recipient. For more information on the release of the retained funds at closeout, refer to Chapter 11 - Project Closeout.

In special cases, a portion or all of the retainage may be released to the TSEP recipient prior to a conditional closeout. This provision will only be permitted at the discretion of the TSEP staff when there are extenuating circumstances that would cause undue hardship on the TSEP recipient and MDOC can be assured that the project will be completed.

## 8. Interim Financing

In some cases, the TSEP recipient may need or want to secure other financing in the interim before TSEP funds become available for release. Local governments that wish to commence work on their projects before TSEP funds are available may arrange interim financing from another funding source. When TSEP funds become available, they can be used to repay the interim loan. However, a local government that obtains interim financing does so at its own risk of a shortfall of TSEP funds. **Before arranging interim financing and incurring any costs, the TSEP recipient should first consult with the TSEP liaison.**

TSEP recipients have the following discretionary interim financing options:

- a. Under Attorney General Opinion Number 14, Volume 38, they may borrow money directly from a financial institution.
- b. Under Section 7-7-109, MCA, they may sell notes in anticipation of receiving a grant or loan from federal or state sources.
- c. Under Sections 7-6-2603 (counties) and 7-6-4501 (cities and towns), MCA, they may issue warrants and register them, a form of borrowing, with a bank, once spending authority has been approved.
- d. Under Sections 7-6-2701 (counties) and 7-6-4603 (cities and towns), MCA, they may invest in the warrants issued in "c" above, subject to the availability of money in the fund from which the investment would be made. This has the effect of an interfund loan.
- e. Under Sections 7-13-2221 (county water and sewer districts) and 7-13-236 (solid waste districts), they may borrow money, in addition to the issuance of bonds, for construction purposes and the purchase of equipment.

## 9. Retention of Documents, Records and Reports

**The following types of documents, records and reports must be retained for three years after project closeout.** However, in the event of litigation, claims, audit or other action, such documents, records and reports must be retained until completion of the action or regular time period, whichever is later.

- a. Documents:
  - (1) Receipts
  - (2) Purchase orders
  - (3) Expenditure reviews

- (4) Invoice/statements
  - (5) Claims
  - (6) Checks
  - (7) Warrants
- b. Records:
  - (1) Accounting
  - (2) Budgetary
  - (3) Payroll
  - (4) Time Sheets
  - (5) Bank statements
- c. Reports:
  - (1) Financial statements/monthly and annual
  - (2) Budgetary/monthly and annual
  - (3) Payroll
  - (4) Requests For Funds and/or Quarterly Project Progress Reports
  - (5) Payment Certifications
- d. Other:
  - (1) Budgetary Resolutions
  - (2) Signature Certifications
  - (3) Designations of Depository

These documents, records and reports are subject to applicable state laws and local requirements relating to public access, privacy and confidentiality.

## 10. Project Monitoring

Recipients of TSEP financial assistance are responsible for administering their TSEP projects in accordance with all applicable state statutory and regulatory requirements, unless they are superseded by federal requirements. The Department has the responsibility to ensure that TSEP recipients are carrying out their projects in accordance with these requirements.

Project monitoring is the Department's primary method for determining whether a project is in compliance with the state laws and TSEP requirements. Consequently, **TSEP staff will periodically make on-site monitoring visits to ensure that TSEP funds are properly used and accounted for and that the projects are being administered in conformance with state laws and regulations.** Chapter 10, Project Monitoring, discusses TSEP monitoring procedures in more detail.

## C. GENERAL ACCOUNTING REQUIREMENTS

The Local Government Services Bureau referenced in the remainder of this chapter is located in the Department of Administration.

### 1. Standards For Accounting Systems

**The TSEP recipient is required to be in compliance with the auditing and reporting requirements provided for in 2-7-503, MCA, and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles (GAAP). Tribal governments must comply with auditing and reporting requirements provided for in OMB Circular A-133 instead of 2-7-503, MCA.**

In order to ensure compliance, MDOC relies upon the Local Government Services Bureau to confirm that the local government appears to be in compliance with GAAP requirements. The Local Government Services Bureau is also available at no charge to the TSEP recipient to help set up an accounting system. The Local Government Services Bureau will not call upon a local government to help it with accounting problems or to verify compliance with GAAP unless requested by the local government. **As a result, the local government will be required to request an on-site visit unless the Local Government Services Bureau can confirm by telephone that the local government appears to be in compliance with GAAP requirements without an on-site visit.**

For new water, wastewater and solid waste districts with no existing accounting system, the TSEP recipient will initially be required to set up an accounting system that can account for expenses related to the project. However, before the TSEP recipient can conditionally closeout the project, a complete accounting system that can account for the operational needs of the system must be in place.

### 2. Fund Accounting

Accountability for TSEP funds requires adequate assurance that these funds are used solely for authorized purposes, a requirement that is best met through fund accounting. Fund accounting is a control device to segregate resources and ensure that the segregated resources are only used for their intended purposes.

TSEP recipient accounting systems should be organized and operated on a fund basis. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related

liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

Governmental accounting standards require that local governments use a fund accounting system. The Montana Bars System for Counties, Cities and Towns, and Special Districts is a fund accounting system that meets all fund accounting requirements.

### 3. Fund Type and Account Group to be Utilized

There are a number of funds and account groups that are required to be utilized in a fund accounting system, each depending on the financial situation. However, the TSEP recipient need only be concerned with the following fund types and account group:

#### a. Capital Projects Funds

Used to account for non-enterprise capital asset resources in the construction of bridges and storm drainage systems.

#### b. General Fixed Asset Account Group

Used to account for non-enterprise capital assets; bridges and storm drainage systems. (If the TSEP recipient elects to capitalize infrastructure fixed assets of governmental funds.)

#### c. Enterprise Funds

Used to account for capital asset resources in the construction of water, sewer or solid waste systems.

The above funds and account group will each be structured with a set of self-balancing accounts, in which to record all appropriate TSEP financial transactions.

### 4. Basis Of Accounting

"Basis of Accounting" is a term used to refer to when revenues and expenditures/expenses, and the related assets and liabilities, are recognized in the accounts and reported in the financial statements.

There are three fundamental accounting bases used to account for transactions, the cash basis, the accrual basis and the modified accrual basis. The basis for Capital Projects Funds is the modified accrual basis. For Enterprise Funds, it's the accrual

basis.

Under the modified accrual basis, revenues are recognized when they become susceptible to accrual; that is when they become both "measurable" and "available" to finance expenditures of the current period. Available means collectible in the current period or soon enough thereafter to be used to pay liabilities of the current period. Expenditures are recognized when the fund liability is incurred.

Under the accrual basis, revenues are recognized when they are earned and become measurable and expenses recognized in the period incurred, if measurable.

## 5. Fund and Account Structure

The chart of accounts is the framework around which the accounting system is built. A chart of accounts is merely a numerical coding system that permits identification of individual accounts. It also simplifies the referencing of entries on documents and records and helps reflect account relationships.

The coding system that follows is consistent with TSEP needs and is made up of fund identifiers, and balance sheet, revenue and expenditure accounts.

### a. Fund Code Identifiers

The fund code identifiers assigned to the required TSEP funds are:

<u>FUND</u>	<u>FUND/RANGE</u>
(1) <u>Capital Projects Funds</u> For non-enterprise public facility projects	4300-4399
(2) <u>General Fixed Asset Account Group</u> For capital projects funds assets (where you book a bridge, water treatment plant, etc. once completed)	9000
(3) <u>Enterprise Funds</u> For public facility projects:	
Water	5210
Sewer	5310
Solid Waste	5410

### b. Balance Sheet Accounts

Balance sheet accounts are those accounts that remain open after the books have been closed at year-end, the balances of which are carried forward into

the succeeding year. When properly classified, these accounts form the basis for the balance sheet. Simply put, the balance sheet purports to exhibit what a fund owns in the form of assets and what a fund owes in the form of liabilities, the net result of which (assets minus liabilities) is equity.

- (1) The general ledger balance sheet accounts applicable to Public Facility Projects (Capital Projects Funds) are:

<u>Account Number</u>	<u>Account Name</u>
101000	Cash
172000	Revenue Control
201100	Warrants Payable
202100	Accounts Payable
242000	Expenditure Control
271000	Fund Balance

- (2) The general ledger balance sheet accounts applicable to the General Fixed Asset Account Group (Capital Projects Funds Assets) are:

<u>Account Number</u>	<u>Account Name</u>
181000	Land
182000	Buildings
184000	Improvements other than Buildings
186000	Machinery and Equipment
188000	Construction Work in Progress
286000	Investment in General Fixed Assets-State Grants

- (3) The general ledger balance sheet accounts applicable to public facility projects (Enterprise Funds) are:

<u>Account Number</u>	<u>Account Name</u>
1021xx	Cash
172000	Revenue Control
188000	Construction Work in Progress
189xxx	Treatment Plant
189xxx	Utility Plant
189xxx	Allowance for Depreciation
201100	Warrants Payable
202100	Accounts Payable
204000	Loans Payable (short term)

235000	Loans Payable (long term)
242000	Expenditure Control
250700	Reserve for Construction
2601xx	Contributed Capital
272000	Unreserved Retained Earnings

**c. Revenue Accounts**

Revenues should be classified by source. The primary functions of revenue accounts are to provide a means for verifying the receipt of revenues and to furnish information for preparing financial reports. Revenue accounts are closed out at year-end.

The revenue accounts applicable to Public Facility Projects (Capital Projects Funds and Enterprise Funds) are:

<u>Account Number</u>	<u>Account Name</u>
331xxx	Federal Grants/Loans
334120	Treasure State Endowment Program
334xxx	Other State Grants/Loans
362000	Miscellaneous

**d. Expenditure Accounts**

Expenditures should be classified by function, activity and object. The function classification provides information on the overall purposes or objectives of expenditures. The activity classification provides information according to the specific types of work performed by the organizational unit. And the object classification relates to the article purchased or service obtained. The primary functions of expenditure accounts are to provide proper control and furnish information for preparing financial reports. Expenditure accounts are closed out at year-end.

The expenditure accounts applicable to Public Facility Projects (Capital Projects Funds and Enterprise Funds) are:

<u>Account Number</u>	<u>Account Name</u>
470400	Infrastructure
<i>(the first two numbers "47" tells you it's a public works project)</i>	
470410	Administration
100	Personal Services
200	Supplies

310	Postage
320	Printing/Duplicating
330	Advertising/Publications
340	Telephone
350	Legal
351	Accounting/Auditing
352	Consulting
353	LGS Technical Assistance
370	Travel/Training
800	Other
470420-9xx	Acquisition
470430-9xx	Engineering/Arch. Services
470440-9xx	Construction
470450-9xx	Other

### Optional Treatment Of Certain Enterprise Fund Transactions

The proceeds from capital grants and loans, etc., may be treated as revenue on an interim basis during the fiscal year. And, similarly, the payments made for capital outlay and the principal portion of debt service, etc., may be treated as an expense on an interim basis during the fiscal year. This departure provides a level of simplicity and a visibility of transactions on interim reports that otherwise would not occur.

At year-end, the respective accounts must be closed out so that all accounts are reflected properly in the general accounting records.

## 6. Fixed Asset Accounting

"Fixed assets" are long-lived tangible assets obtained or controlled as a result of past transactions, events or circumstances. Fixed assets may include buildings, equipment, or improvements other than buildings and land.

They are acquired with cash or cash in conjunction with a trade-in, constructed, and acquired through lease agreement, grant, gift, or donation. Fixed assets acquired should be recorded at historic cost, or if not practically determinable, at estimated historic cost. Donated fixed assets should be recorded at their fair market value when received.

The cost of a fixed asset should include not only its purchase price or construction cost, but also any other reasonable and necessary costs incurred to place the asset in its intended location or use. Such costs could include the following:

Administration fees/costs	Demolition costs
Legal and title fees	Architect and accounting fees
Appraisal or negotiation fees	Site preparation costs
Damage payments	Interest costs during construction
Transportation charges	Surveying fees
Insurance premiums during construction	

#### **a. Governmental Funds**

Generally accepted accounting principles require that fixed assets of a government not reported in a proprietary fund or a trust fund be reported in a General Fixed Assets Account Group (GFAAG). This account group is not a fund; it does not have a balance sheet as such, nor does it report operations. Instead, the GFAAG serves as a list of the government's fixed assets and is designed to ensure accountability. Because the account group does not report operations, all additions and deletions to the GFAAG should be recorded by direct adjustment to the accounts appearing on the entity's combined balance sheet.

The Governmental Accounting Standards Board (GASB) specifically allows governments the option of not reporting infrastructure fixed assets in the GFAAG. By definition, infrastructure assets are immovable and of value only to the governmental unit (sidewalks, gutters, bridges). Therefore, some have argued that there is less need for an accountability listing of such assets because the risk of their being lost or stolen is considerably less than that of other fixed assets. Such an argument, however, fails to take into account the potential losses that can result from poor maintenance or general neglect. Under GASB Pronouncement 34, however, infrastructure will be required to be reported at years ending after June 15, 2003.

The assets reported in the GFAAG normally are presented by class (land, buildings, improvements other than buildings, equipment). The total amount of these assets is offset by investment in general fixed asset accounts that normally provide details on the source of funding for these assets (other governments, individuals, capital projects, grants). The Investment in General Fixed Assets Account is presented as another credit with a local government's equity accounts.

Because an account group does not report operations, no charge for depreciation can be reported in the account group. Therefore, assets reported in the GFAAG normally continue to be reported at their original cost until disposal. However,

Generally Accepted Accounting Principles (GAAP) provides the option of reporting accumulated depreciation on these assets. Because no charge for depreciation can be reported, this account is established by directly reducing the investment in the general fixed asset account and crediting accumulated depreciation for the same amount. (Governmental Accounting, Auditing and Financial Reporting (GAAFR), and Government Fixed Asset Inventory Systems. Published by the Government Officers Association, 180 Michigan Avenue, Suite 800, Chicago, IL 60601-7476.)

#### **b. Enterprise Funds**

Enterprise fixed assets are not recorded in the GFAAG. Instead, they are accounted for as fund assets of the enterprise itself. The treatment differs because enterprise fixed assets are utilized in revenue producing activities, and the performance measure of an enterprise is the periodic determination of net income. In the net income determination process, GAAP requires a proper matching of all costs associated with the production of revenues. Depreciation of fixed assets used in the production of revenues is a proper element of such costs. Therefore, enterprise fixed assets are to be capitalized and depreciated in the fund generating the revenues.

"Depreciation" is the expiration in the service life of fixed assets, except land, attributable to wear and tear, deterioration, action of the physical elements, inadequacy and obsolescence. Depreciation is a rational and systematic method of distributing the cost of a capital asset over its estimated service life.

Depreciation is an important element in the income determination process of an enterprise. The method used to allocate the cost of a capital asset over its estimated service life should be as equitable as possible to the periods in which services are obtained from the use of the asset. By far, the most common approach used in practice is the straight-line method.

The straight-line method of depreciation simply requires that the cost of the fixed asset (less projected salvage value) be divided by the number of years of estimated service life to arrive at the annual depreciation charge. Estimated service life is the length of time a fixed asset can be expected to perform the function for which it was intended.

#### **c. Fixed Asset Policy Guidelines**

Inadequate fixed asset records continue to be one of the major causes of deficiencies in most local government's financial statements. Failure to maintain a fixed asset system usually results in a qualification in the independent auditor's report (opinion) on the government.

On the other hand, an adequate fixed asset system can result in measurable benefits that provide:

- (1) Conformity with generally accepted accounting principles;
- (2) Reliable information about fixed assets now owned. Because capital budgets are best developed on a long-term basis, such information is invaluable in projecting future requirements;
- (3) Assistance in maintaining accountability for the custody of individual items and in determining who is responsible for their care and maintenance;
- (4) Information necessary to perform regular inventories to determine physical condition, theft, or unauthorized transfers;
- (5) The ability to identify worn out or obsolete equipment on a concurrent basis. Provision for replacement can be included in a budget before emergency replacement or unwarranted repairs are necessary;
- (6) A basis for adequate insurance coverage on insurable fixed assets. Although cost is not the only determinant of insurable value, it could be a necessary consideration; and
- (7) Property records that furnish information about the investment taxpayers have made for the future benefit to users of government policy.

A number of critical decisions must be made, however, before an adequate fixed asset policy can be established and implemented. Some of those decisions are:

- (1) Which asset types should be included? For example, should the infrastructure general fixed assets be included in the system?
- (2) Which assets should be accounted for individually and which should be grouped? For example, should the cost of a fire engine include hoses, ladders, and other associated equipment?
- (3) What should the capitalization policy be? This sets the requirements for minimum costs to be accounted for and useful lives.
- (4) What are the expected useful lives for the different kinds of fixed assets?
- (5) What depreciation method is best? Should the government accumulate depreciation on general fixed assets?

- (6) When should depreciation begin for assets acquired during the year? For example, depreciation can begin the month the asset is put into service, or a full year's depreciation can be reported for assets received in the first six months and none for those received during the balance of the year. Still, other governments use the half-year convention where fifty percent of the year's depreciation is taken in the year of addition and in the year of disposition.
- (7) What information is needed to begin and maintain the system? Determine data base requirements, the coding system and required reports.
- (8) What forms are needed to secure the required information? Their design must ensure complete information and efficient processing.
- (9) How will the system be established? A work plan should fix responsibility and establish time estimates. In particular, the initial inventory must be planned thoroughly.
- (10) What other policy decision should be established? All policy decisions should be made before beginning work on the fixed asset system. This includes all aspects of the remaining steps -- assigning carrying values and maintaining the system.

A critical step in establishing a fixed asset accounting and reporting system is to establish procedures that will keep the records current. All previous efforts will become outdated and useless unless the information can be updated.

## 7. Basic Accounting Records

The books of accounts maintained are assumed to be on the double entry system. A double-entry system is defined as a system which requires for every entry made to the debit side of an account(s), an entry for a corresponding amount(s) be made to the credit side of another account(s).

The records required to account for TSEP funds are of two types: the books of original entry and the books of final entry. The books of original entry are those records in which transactions are recorded for the first time, i.e., the Cash Receipts Journal, the Cash Disbursement Journal and the General Journal Voucher. The books of final entry are the summary records in which accounting information is accumulated for financial reporting, i.e., the General Ledger. In an automated environment, however, a single transaction may be recorded simultaneously in the books of original entry and in the books of final entry.

The required books of original and final entry are described below.

**Cash Receipts Journal**

All cash received is recorded in this book of original entry.

**Cash Disbursement Journal**

All cash disbursed is recorded in this book of original entry.

**General Journal Voucher** *(used to correct errors)*

All transactions in place of, or supplemental to, the regular journals are recorded in this book of original entry. The voucher is a substitute for maintaining a formal General Journal.

**General Ledger** *(should be self-balancing)*

The General Ledger is the book of final entry, where all summarized journal transactions are posted. It contains the accounts needed to present, after closing, the financial representations of the organizational unit.

It is virtually impossible to discuss the books of original entry without discussing their relationship to source documents. Specifically, source documents are documents upon which evidence of an accounting transaction is initially recorded. They may be internally or externally created and are used as the source of entry and support to the various books of original entry. Examples of source documents are general receipts, purchase orders, invoices, claims, payroll time records, contracts, etc.

8. **Financial Reports**

The financial statements of the TSEP recipient must present fairly its financial position and results of operations in accordance with generally accepted accounting principles, and include the following:

- a. The Combined and Combining Balance Sheets - All Fund Types;
- b. The Combined Statement of Revenues, Expenditures and Changes in Fund Balances - All Governmental Fund types;
- c. The Combined and Combining Statement of Revenues, Expenditures and Changes in Fund Balances, Budget and Actual - All Governmental Fund types;

- d. The Combined Statement of Revenues, Expenses, and Changes in Retained Earnings - All Proprietary Fund Types;
- e. The Combined Statement of Cash Flows - All Proprietary Fund Types. (The Statement of Cash Flows may be reported using the direct or indirect method of cash flows from operating activities. Although GASB encourages the use of the direct method of reporting cash flows from operations, entities may utilize the format considered to be most informative. The format chosen for the annual report of a county, city, or town is the Indirect Method.)

## **D. INTERNAL CONTROL**

Assuring adequate internal control is fundamental and indispensable for all types of organizations. It can be defined in terms of two elements, administrative controls and accounting controls. Administrative controls are designed to encourage adherence to prescribed policies and accounting controls deal with safeguarding assets.

Both administrative and accounting controls are implemented primarily through:

- . Developing specific written procedures that specify how activities and functions will be conducted.
- . Segregating key control duties and responsibilities among different employees.
- . Monitoring these procedures, duties and responsibilities to ensure conformance.

All local governments, including the TSEP recipient, are responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by the TSEP recipient are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of internal control are to provide the TSEP recipient with reasonable, but not absolute, assurance that assets are safeguarded against loss and that transactions are executed in accordance with the TSEP recipient's authorization.

In the financial management of TSEP funds, it is presumed that, at a minimum, the TSEP recipient will see that the work is properly segregated so that no one person is allowed to perform a complete cycle of operations. Where segregation of duties is not always possible because of staffing limitations, management should function in an oversight capacity. In such an event, the oversight provided should be as compensating as circumstances dictate.

The TSEP recipient's fiscal officer and local TSEP grant administrator should establish the internal control policies necessary to reduce the probability that errors or irregularities will occur in TSEP project funds.

The TSEP grant administrator, fiscal officer and other staff should discuss the division of responsibilities for the grant. Even though their responsibilities will be divided, the TSEP grant administrator and fiscal officer should be aware of the activities and expenditures occurring in each person's area of responsibility. A separation of duties should exist so that total control does not rest with one individual. This could be accomplished by:

- the fiscal officer and TSEP grant administrator having dual controls;
- claims being approved by the governing body and a listing included in the minutes; and
- checks/warrants signed by two authorized individuals.

Typically, the TSEP grant administrator will:

- review all expenditures through contracts, invoices and/or purchase orders;
- ensure proper coding of expenditures; and
- review and process payment requests for contractors.

Typically, the local fiscal officer and staff will:

- maintain records;
- prepare financial reports; and
- prepare checks/warrants for approved expenditures.

Several communities have developed forms to deal with the routine review and approval of bills, invoices, or other proposed expenditures by the grant administrator to assure that all expenditures are eligible and proper uses of TSEP funds. An example is included in Exhibit 4-E.

Internal control may not eliminate the probability that errors or irregularities will occur. But the probability of their occurrence can be reduced, if the TSEP recipient will put in place the proper administrative and accounting control policies and procedures.

## E. ILLUSTRATIVE ACCOUNTING ENTRIES

The illustrative accounting entries that follow represent those most commonly associated with TSEP funds on a recurring basis. These illustrations are not intended to be all-inclusive, but they are intended to exhibit a cross-section of pertinent entries - without undue repetition. (Note: "Sub" is the abbreviation for subsidiary. It is the account detail that supports the general ledger control account.)

### 1. Public Facility Capital Projects Fund

The County of XYZ applied for and was awarded a \$100,000 grant for the construction of a new bridge. (Note: The County does not elect to capitalize the infrastructure fixed assets of governmental funds.)

- a. The first and only drawdown of the fiscal year was for \$25,000.
- b. Of this amount, \$24,000 was spent on construction costs in the fiscal year in which it was received.
- c. At year-end, the revenue and expenditure accounts were closed-out.

<u>Related Accounting Entries</u>	<u>Debit</u>	<u>Credit</u>	<u>Sub</u>
(a) 4300-101000 Cash	\$25,000		
4300-172000 Revenue Control		\$25,000	
4300-334120 TSEP Grants/Loans			\$25,000
(To record receipt of grant funds. Ordinarily, this entry would be recorded as part of the cash receipt process.)			

<u>Related Accounting Entries</u>	<u>Debit</u>	<u>Sub</u>	<u>Credit</u>
(b) 4300-242000 Expenditure Control	\$24,000		
4300-470440-9xx Construction		\$24,000	
4300-101000 Cash			\$24,000
(To record payment of construction costs. Ordinarily, this entry would be recorded as part of the cash disbursement process.)			

<u>Related Accounting Entries</u>	<u>Debit</u>	<u>Credit</u>
(c) 4300-172000 Revenue Control	\$25,000	
4300-242000 Expenditure Control		\$24,000
4300-271000 Fund Balance		\$ 1,000
(To record year-end closing.)		

## 2. Public Facility Enterprise Fund

a. *The City of ABC applied for and was awarded a \$500,000 grant for a sewer treatment plant.*

- (1) During the initial fiscal year, half of the grant was received.
- (2) During the same period, half of the grant was spent for construction costs.
- (3) At year-end, closing entries were made and the work in progress account established.
- (4) During the following year, the remaining portion of the grant was drawn down and spent and the project completed. (Entries are not repeated.) The work in progress account balance of \$500,000 was transferred to fixed assets.

<u>Related Accounting Entries</u>	<u>Debit</u>	<u>Credit</u>	<u>Sub</u>
(a) 5310-1021xx Cash	\$250,000		
5310-172000 Revenue Control		\$250,000	
5310-334120 TSEP Grants/Loans			\$250,000
(To record receipt of grant proceeds. Ordinarily, this entry would be recorded as a part of the cash receipts process.)			

<u>Related Accounting Entries</u>	<u>Debit</u>	<u>Sub</u>	<u>Credit</u>
(b) 5310-242000 Expenditure Control	\$250,000		
5310-470440-9xx Construction		\$250,000	
5310-1021xx Cash			\$250,000
(To record payment of construction costs. Ordinarily, this entry would be recorded as a part of the cash disbursement process.)			

<u>Related Accounting Entries</u>	<u>Debit</u>	<u>Sub</u>	<u>Credit</u>	<u>Sub</u>
(c) 5310-172000 Revenue Control	\$250,000			
5310-334xxx Grants/Loans		\$250,000		
5310-2601xx Contributed Capital			\$250,000	
5310-188000 Work in Progress	\$250,000			
5310-242000 Expenditure Control		\$250,000		
5310-470440-9xx Construction				
\$250,000				
(To record year-end closing and work in progress. Ordinarily, this entry would be recorded by GJV.)				

<u>Related Accounting Entries</u>		<u>Debit</u>	<u>Credit</u>
(d) 189xxx	Treatment Plant	\$500,000	
188000	Work in Progress		\$500,000
(To transfer work in progress to fixed assets.)			

b. *The Montana Water District applied for and was awarded a \$10,000 loan for water engineering services.*

- (1) The \$10,000 loan was received shortly after the loan agreement was signed.
- (2) All but \$500 of the loan was expensed for engineering services.
- (3) At year-end, closing entries were made and the loan payable established.
- (4) Eleven months after the loan agreement was signed, the TSEP recipient repaid the loan.

<u>Related Accounting Entries</u>		<u>Debit</u>	<u>Credit</u>	<u>Sub</u>
(a) 5210-1021xx	Cash	\$10,000		
5210-172000	Revenue Control		\$10,000	
5210-334120	TSEP Grants/Loans			\$10,000
(To record receipt of loan proceeds. Ordinarily, this entry would be recorded as a part of the cash receipts process.)				

<u>Related Accounting Entries</u>		<u>Debit</u>	<u>Sub</u>	<u>Credit</u>
(b) 5210-242000	Expenditure Control	\$9,500		
5210-470430-9xx	Engineering		\$9,500	
5210-1021xxx	Cash			\$9,500
(To record payment of engineering costs. Ordinarily, this entry would be recorded as a part of the cash disbursement process.)				

<u>Related Accounting Entries</u>		<u>Debit</u>	<u>Sub</u>	<u>Credit</u>
(c) 5210-172000	Revenue Control	\$10,000		
5210-331xxx	Grants/Loans		\$10,000	
5210-204000	Loans Payable (short term)			\$10,000

(To record year-end closing entries and establish the loan payable. Ordinarily, this entry would be recorded by GJV.)

### Related Accounting Entries

### Debit

### Credit

(d) 5210-204000    Loan Payable  
      5210-1021xx Cash

\$10,000

\$10,000

(To record repayment of loan. Ordinarily, this entry would be recorded as part of the cash disbursement process.)

## **F.     AUDIT REQUIREMENTS**

If federal funds, such as from the Community Development Block Grant (CDBG) Program, will be used to help fund a TSEP public facilities project, the federal audit requirements may also apply, depending upon the amount of federal awards expended during a fiscal year. The pertinent federal requirements are typically spelled out in the auditee's grant document and may also be found in the Catalog of Federal Domestic Assistance (CFDA) under that program's specific identification number. For CDBG funding being passed through the MDOC the CFDA number is 14.228. Because the pertinent federal audit requirements and procedures vary among federal agencies, the auditor will follow the guidance prescribed above as well as in the OMB Circular A-133 Compliance Supplement, which is updated annually, to audit the auditee's federal funds. If federal funds will be involved in your TSEP project, you should consult with the federal or state granting agency that is providing assistance for guidance on the audit requirements that will apply.

### **1.     Federal - Laws and Regulations**

- a.     **The Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996**, the principal federal audit statute, imposes no audit requirements on the TSEP recipient. The only audit requirements that are applicable to TSEP funds are those imposed by State law – see below.
- b.     **OMB Circular A-133**, Audits of States, Local Governments, and Non-Profit Organizations sets forth the regulations issued by the Office of Management and Budget (OMB) to implement the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996. As required by the Act itself, a recipient is only required to have an audit in accordance with the requirements of this Circular if the recipient expends \$300,000 or more in a year in federal awards. Because TSEP funding is 100% from the State of Montana these requirements are not applicable to the TSEP funding of a project.

- c. **Government Auditing Standards** (referred to as the Yellow Book) contain generally accepted government auditing standards applicable to the TSEP recipient. Issued by the U.S. Comptroller General, these standards incorporate auditing standards generally accepted in the United States as adopted by the American Institute of Certified Public Accountants. Normally these standards would only apply if a local government entity was required to have an audit in accordance with the Single Audit Act and OMB Circular A-133. However, in Montana, the Department of Administration has adopted administrative rules that require that all audits of Montana local government entities conducted under the provisions of the Montana Single Audit Act (Title 2, Chapter 7, Part 5, MCA) be conducted in accordance with Government Auditing Standards that are applicable to financial audits.

## 2. State - Laws and Regulations

- a. **Sections 2-7-501 through 2-7-522, MCA**, set forth the requirements for the audit of political subdivisions, referred to as the Montana Single Audit Act.
- b. **ARM 2.4.401 through 2.4.411** set forth the regulations of the Montana Single Audit Act for Montana local government entities.
- c. **MDOA's Compliance Supplement for Audits of Montana Local Government Entities** sets forth those legal compliance matters deemed most important to financial operations of political subdivisions.

## 3. The Montana Single Audit Act

The purpose of the Montana Single Audit Act is to:

- a. Improve the financial management of local government entities with respect to federal, state, and local financial assistance;
- b. Establish uniform requirements for financial reports and audits of local government entities;
- c. Ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished;
- d. Ensure that the financial condition and operations of the local government entities are reasonably conducted and reported;
- e. Ensure that the stewardship of local government entities is conducted in a manner to preserve and protect the public trust;

- f. Ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public; and
- g. Promote the efficient and effective use of audit resources.

#### 4. Audit Threshold and Frequency

Section 2-7-503(3), MCA. The governing body or managing or executive officer of each local government entity receiving revenues or financial assistance in excess of \$200,000 during the reporting period (1 year) shall cause an organization-wide audit to be made at least every 2 years.

The audit must cover the entity's two preceding fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to MDOA for review within 1 year from the close of the last fiscal year covered by the audit.

#### 5. Montana Single Audit Administrative Rule Requirements - ARM 2.4.401 through 2.4.411 (Note: In the following sections dealing with the Administrative Rule audit requirements, the word "department" refers to the Department of Administration unless another department is specifically named.)

##### a. **Audit and Audit Report Standards – ARM 2.4.405**

- (1) All audits performed under section 2-7-503, MCA, must be conducted in accordance with Government Auditing Standards, issued by the U.S. Comptroller General [see ARM 2.4.411(3)], that are applicable to financial audits. Those standards incorporate generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants.
- (2) Audits must conform to the requirements of the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996, (P.L. 104-156) and the OMB Circular A-133 [see ARM 2.4.411(4)].
- (3) All audit reports shall comply with the reporting standards for financial audits prescribed in Government Auditing Standards as established by the U.S. Comptroller General, which incorporate the standards of reporting for financial audits prescribed by the American Institute of Certified Public Accountants [see ARM 2.4.411(3)].
- (4) For audits conducted under the provisions of the OMB Circular A-133, the audit reports shall comply with the reporting requirements of that circular [see ARM 2.4.411(4)].

**b. Roster of Independent Auditors Authorized to Conduct Audits of Local Government Entities – ARM 2.4.406**

- (1) An independent auditor, as defined by section 2-7-501(6), MCA, must conduct local government entity audits under the provisions of Title 2, chapter 7, part 5, MCA. For purposes of this requirement, an "independent auditor" is a federal, state, or local government auditor who meets the standards specified in Government Auditing Standards as established by the U.S. Comptroller General; or a licensed accountant who meets the standards specified in Government Auditing Standards as established by the U.S. Comptroller General [see ARM 2.4.411(3)].
- (2) In order to conduct audits of local government entities, an independent auditor must be on the roster of independent auditors, authorized to conduct such audits, that is maintained by the Department.
- (3) In order to be placed on the roster, independent auditors must complete an application form prescribed by the Department and meet the criteria set out in this section.
- (4) Independent auditors with separate offices registered as required by section 37-50-335, MCA, must submit separate application forms for each office that is to be placed on the roster.
- (5) To be eligible for inclusion on the roster, an independent auditor must meet the requirements of section 37-50-335, MCA and ARM 2.4.406.
  - (a) if an individual, hold a current Montana certificate as a certified public accountant and hold a current annual permit to engage in the practice of public accounting under section 37-50-314, MCA, or hold a current license as a licensed public accountant, have been licensed on or before December 31, 1970, and hold a current annual permit to engage in the practice of public accounting under section 37-50-314, MCA;
  - (b) if a partnership or corporation, be currently registered as a partnership of certified public accountants or a corporation of certified public accountants, or be currently registered as a partnership of licensed public accountants or a corporation of licensed public accountants, and have been registered on or before December 31, 1970 (section 37-50-335);

- (c) meet the continuing education requirements specified in Government Auditing Standards, as established by the U.S. Comptroller General;
  - (d) have an external quality control review at least once every 3 years that meets the requirements specified in Government Auditing Standards, as established by the U.S. Comptroller General, and receive an unqualified review report from the reviewing firm, team or association;
  - (e) not have been restricted in the conduct of governmental auditing by the Montana Board of Public Accountants;
  - (f) not have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from performing audits by any state or federal department or agency;
  - (g) not have been deemed ineligible to conduct local government entity audits by the Department:
    - (i) because of failure to conduct local government entity audits under contract with the Department during the previous two years in accordance with the audit standards described in ARM 2.4.405,
    - (ii) because of failure during the previous two years to adhere to the terms and conditions of an audit contract with the Department, or
    - (iii) because the independent auditor is more than 90 days delinquent in filing an audit report required under an existing contract with the Department and has not obtained the Department's written consent to an extension of the contracted filing date.
- (6) An independent auditor may be removed by the Department from the roster of independent auditors authorized to conduct audits of local government entities for failure to continue to meet the eligibility requirements specified above.
- (7) If an independent auditor is removed by the department from the roster as provided in (6) above, the independent auditor must complete the application form prescribed by the Department, meet the eligibility requirements set out in (5) above, and pay the fee specified in (10) below in order to again be placed on the roster.

- (8) To remain on the roster, an independent auditor must complete and submit to the Department on or before June 30 of each year a renewal form prescribed by the Department on which the independent auditor certifies that the individual, partnership or corporation continues to meet the eligibility requirements specified above.
- (9) To ensure that each independent auditor meets the eligibility requirements specified above, the Department may, at any other time during the year, require the independent auditor to submit to the department evidence that the independent auditor meets the above eligibility requirements, including but not limited to documentation of required continuing professional education and the required external quality control review.
- (10) At the time of original application to the department for placement on the roster, and at the time the annual renewal form is submitted to the Department, each independent auditor, including each office, shall pay to the Department a fee of \$50.00.
- (11) If an independent auditor is removed from the roster, or if an independent auditor does not properly renew for continuance on the roster, any and all contracts for local government entity audits entered into under the provisions of section 2-7-506, MCA, to which the independent auditor is a party are terminated, and the Department will notify the local government entities of the termination. If an independent auditor is removed from the roster, the Department will not refund any portion of the fee paid to the Department by that independent auditor for placement on the roster.
- (12) Upon notification of the termination of a contract for a local government entity audit, the local government entity must select another independent auditor from the Department's roster of independent auditors authorized to conduct local government audits and present a signed contract to the Department for approval within 90 days of notification of the termination.
- (13) Upon termination of a contract for a local government entity audit, if the local government entity fails to present a signed contract to the department for approval with the 90 day period in (12) above, the Department will designate an independent auditor to perform the audit as provided by section 2-7-506(5), MCA.

**c. Criteria for the Selection of the Independent Auditor – ARM 2.4.407**

- (1) In selecting an independent auditor to perform an audit under section 2-7-503, MCA, a local government entity shall consider the following criteria:

- (a) listing on Department's roster of independent auditors authorized to conduct local government audits;
  - (b) independence, as defined by applicable auditing standards;
  - (c) demonstrated understanding of the work to be performed;
  - (d) technical experience of the independent auditor in conducting similar types of local government entity audits;
  - (e) qualifications of staff to be assigned to the audit;
  - (f) work history of the independent auditor; and
  - (g) the proposed audit fee.
- (2) The Department may require the local government entity to demonstrate that the independent auditor selected is qualified to conduct the audit based on an evaluation of:
- (a) the criteria established in (1) above;
  - (b) any additional information requested by and used by the local government entity in selecting the independent auditor; and
  - (c) the results of oral interviews of independent auditors conducted by the local government entity, if appropriate.

**d. Audit Contracts – ARM 2.4.408**

- (1) As provided by section 2-7-506(3), MCA, an audit of a local government entity by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government and the independent auditor.
- (2) The Department must be a party to the contract, and work under the contract may not commence until the department signs the contract.
- (3) All contracts for conducting audits must be in a form prescribed by the Department.

- (4) The Department will not enter into a contract in which the independent auditor and local government entity have not provided all of the information required by the contract form.
- (5) The Department will not enter into an audit contract covering more than three consecutive fiscal years.

6. Audit Costs

Some TSEP recipients include funds in their TSEP project budget to cover all or a portion of the audit costs. The cost of paying the TSEP share of an audit is an eligible TSEP expense. The percentage of the total audit costs that should be charged to the TSEP project should be proportional to the percentage of TSEP funds that are received and/or expended as compared to the recipient's total funds that are received and/or expended during the audit period. After all other project activities are completed, any other unexpended TSEP funds from the balance remaining will be reserved by MDOC to cover the TSEP project's share of audit costs, or in the event that a project-specific audit is conducted, the direct costs of the audit.

## CHAPTER 4

### EXHIBITS

- 4-A Sample Budgetary Authority Resolution
- 4-B Request for Funds Form and Instructions
- 4-C TSEP Project Progress Report Format
- 4-D Sample TSEP Project Progress Report
- 4-E Sample Expenditure Review Form
- 4-F Checklist for Submittal of Request for Funds
- 4-G Uniform Status of Funds Spreadsheet and Instructions
- 4-H Sample Uniform Status of Funds Spreadsheet
- 4-I Uniform Invoice Tracking Spreadsheet and Instructions
- 4-J Sample Uniform Invoice Tracking Spreadsheet
- 4-K Certification of Labor Compliance



## EXHIBIT 4-A

### SAMPLE BUDGETARY AUTHORITY RESOLUTION FORMAT

#### RESOLUTION NO. \_\_\_\_\_

WHEREAS, on (date), 20 \_\_, the (City, Town, County, Special District of \_\_\_\_\_) received Montana Treasure State Endowment funds in the amount of \$\_\_\_\_, for which no provision was made in fiscal 20\_ (City, Town or County, Special District) budget; and

WHEREAS, (cities, towns or counties, or special districts) may appropriate federal or state money received during the fiscal year by formal resolution,

NOW THEREFORE, BE IT RESOLVED that the (City or Town Council Board of County Commissioners or Special Districts) hereby appropriate the sum of \$\_\_\_\_ and directs the (City Clerk, Town Clerk or County Clerk and Recorder or Finance Officer) to allocate said amount to the following programs and objects:

<u>EXPENDITURE CODE</u>	<u>ADMINISTRATIVE COSTS</u>	<u>ACTIVITY COSTS</u>
(List)	\$ _____ (List)	\$ _____ (List)
TOTALS:	\$ _____	\$ _____

BE IT FURTHER RESOLVED that the above appropriation shall become effective on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of TSEP Recipient)

By \_\_\_\_\_  
(Chief Elected Official or Executive Officer)

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_



## **EXHIBIT 4-B**

### **Request For Funds Form**

(See form on next page)



**TREASURE STATE ENDOWMENT PROGRAM (TSEP)  
REQUEST FOR FUNDS FORM**

**SECTION I - TSEP RECIPIENT INFORMATION**

TSEP CONTRACT NUMBER	DRAWDOWN NUMBER	TOTAL AMOUNT REQUESTED
NAME AND ADDRESS OF TSEP RECIPIENT:	MAKE DEPOSIT PAYABLE TO:	
	ACCOUNT & ABA (Routing) NUMBERS:	

**SECTION II - FINANCIAL INFORMATION**

	A Amount Budgeted	B Amount Expended Prior To This Draw	C Amount Requested	D Balance Remaining After This Draw
1. TOTAL ADMINISTRATION BUDGET *				
2. Percent	% of Total Grant	% of Column A		
3. TOTAL ACTIVITY BUDGET *				
4. Percent	% of Total Grant	% of Column A		
5. TOTAL TSEP BUDGET				
* See attached Uniform Status of Funds Spreadsheet for individual budget line items.	<b>FOR DOC USE ONLY:</b>		Total Amount Requested	\$
			Less 2% Retainage On Final Drawdown	\$
			Adjusted Amount Requested	\$

**REMARKS:**

**SECTION III - LOCAL APPROVAL**

DATE:	SIGNATURE	TITLE
DATE:	COUNTERSIGNATURE	TITLE

**SECTION IV - DOC APPROVAL**

EXPENDITURES ARE REASONABLE, APPROPRIATE _____ FINANCIAL NUMBERS, SIGNATURES CORRECT _____ CONSISTENT WITH PRECEDING DRAW, SBAS _____ BUDGET AMENDMENT APPROVED _____	APPROVED BY: _____  TITLE: _____  DATE: _____
--	---

## INSTRUCTIONS FOR "REQUEST FOR PAYMENT FORM"

Each request for payment must also be accompanied by a Uniform Status of Funds Spreadsheet, a Uniform Invoice Tracking Spreadsheet, and a TSEP Project Progress Report. In order to process a Request for Payment, you must fill out sections I, II and III of this form.

### Section I – TSEP Recipient Information:

1. MDOC/TSEP CONTRACT NUMBER. Enter the MDOC/TSEP contract number of the TSEP grant.
2. DRAWDOWN NUMBER. Number consecutively beginning with "1" for the initial request. Enter the appropriate number and the word "FINAL" for the final request.
3. TOTAL AMOUNT REQUESTED. Enter the total amount requested. Must be the same as Line 5 of Column D of Section II.
4. NAME AND ADDRESS OF TSEP RECIPIENT. Enter the TSEP recipient's mailing address exactly the same as shown on the Designation of Depository Form.
5. MAKE DEPOSIT PAYABLE TO: Enter the TSEP recipient's name, the account and ABA (routing) numbers where indicated, and the name and address of the bank as shown on the Designation of Depository Form.

**Section II - Financial Information:** Lines 1 through 5 must be completed. Lines 1 through 5 relate to TSEP funds only.

1. COLUMN A. Enter the amount budgeted for lines 1 and 3 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).
2. COLUMN B. Enter the amount expended prior to this draw for lines 1 and 3 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).
3. COLUMN C. Enter the amount requested for this draw for lines 1 and 3 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).
4. COLUMN D. Enter the amount remaining after this draw for lines 1 and 3 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).
5. PERCENT. Enter the calculated percentages as indicated for lines 2 and 4 as appropriate for the approved budget and subsequent expenditures.
6. TSEP TOTALS. Total columns A through D on line 5 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).
7. FOR MDOC USE ONLY. Leave blank. This box is only for MDOC's use, in order to subtract the 2% retainage on the final drawdown.
8. REMARKS. Use this space to clarify information.

### Section III - Local Approval

Two original authorized signatures from the TSEP recipient are required, along with the date signed and titles of the officials. These signatures must be exactly as shown on the Signature Certification Form. Photocopied signatures are not acceptable.

### Section IV - MDOC Approval

Leave blank. This section is for MDOC comment and approval only.

Use an initial copy of the form as a "master" form to avoid unnecessary duplication for subsequent drawdown requests. Type the information for MDOC/TSEP Contract Number, Name and Address of TSEP Recipient, "Make Deposit Payable To", and Column A of Section II on this master form. For each subsequent drawdown request, enter the remaining information on a copy of this "master" form. Submit the signed "original" of the drawdown request, retaining a copy for your files.

## EXHIBIT 4-C

### TSEP PROJECT PROGRESS REPORT

NAME OF TSEP RECIPIENT: \_\_\_\_\_

GRANT CONTRACT NUMBER: #MT-TSEP-\_\_\_\_ - \_\_\_\_

DRAWDOWN NUMBER: \_\_\_\_\_

TOTAL AMOUNT REQUESTED: \_\_\_\_\_

DATE: \_\_\_\_\_

**Administration: Amount Requested \$** \_\_\_\_\_

Include the amount and a brief description of each individual administrative/financial related expenditure (invoice) that will be paid for in whole or in part using TSEP funds. For each invoice totaling \$5,000 or more, attach a copy of the invoice. Include summary payroll information for all work performed by the TSEP recipient's employees. At a minimum, include the name, title, time period that work was performed, total hours worked, activities performed, and total amount earned.

**Activity: Amount Requested \$** \_\_\_\_\_

Include the amount and a brief description of each individual construction related expenditure (invoice) that will be paid for in whole or in part using TSEP funds. For each invoice totaling \$5,000 or more, attach a copy of the invoice. Include summary payroll information for all work performed by the TSEP recipient's employees. At a minimum, include the name, title, time period that work was performed, total hours worked, activities performed, and total amount earned.

#### **Project Status (Administration/Financial and Construction):**

This portion of the report should provide a summary of the overall status of the project and any other information relevant to the implementation of the project. Include a description of any accomplishments achieved since the last progress report submitted.

Use quantitative terms whenever possible. First, provide the percent estimate of how complete the project is in its entirety, and then provide estimates for major components of the project.

Provide any other information that appears pertinent, such as anticipated changes in the contract budget, implementation schedule, or scope of services. For example, if you anticipate any problems or delays that could affect the project implementation schedule or budget, these should be fully described and discussed well in advance, since a budget adjustment requires prior approval. Finally, indicate any milestones from the implementation schedule that are behind schedule and indicate when they should be completed.

## EXHIBIT 4-D

### SAMPLE TSEP PROJECT PROGRESS REPORT

NAME OF TSEP RECIPIENT: Town of Sunrise  
GRANT CONTRACT NUMBER: #MT-TSEP-93-00  
DRAWDOWN NUMBER: 3  
TOTAL REQUESTED: \$86,730  
DATE: 8/23/94

#### **Administration: Amount Requested \$7,750**

The funds requested for administrative costs in this drawdown are for the following tasks:

1. Legal services for preparation and legal review of contract with construction contractor, invoice dated 6/22/94 - \$450
2. Labor costs for time spent by Sue Curtis, City Clerk, 6/7/94 through 7/31/94, 50 hours, setting up filing and accounting systems for project - \$500 (Note: time sheets are on file in City Clerk's office)
3. Travel expenses for two City officials to attend TSEP project administration workshop, 2 days travel, meals \$100 and rooms \$150 - \$250
4. Misc. office expenses and supplies (MS Word software) - \$50
5. Consulting services for time spent by the TSEP Project Manager setting up project files and accounting system, invoice dated 6/4/94 - \$1,000
6. Consulting services for time spent by the TSEP Project Manager preparing drawdown requests and progress reports, meeting with the Nick Rich, TSEP liaison, when monitoring project, conducting prevailing wage compliance employee interviews, and on-site meetings with the engineer and contractor to discuss and monitor project construction - \$5,000 (See attached invoice dated 6/24/94)
7. Loan fees to set up TSEP loan through the DNRC - \$600

#### **Activity: Amount Requested \$78,980**

The funds requested for activity costs in this drawdown are for the following tasks:

1. Payment of \$50,000 to XYZ Construction Company for work on the water lines (See attached invoice dated 6/23/94).
2. Reimbursement for engineering services and inspections to Engineering Plus - \$6,000 (See attached invoice dated 6/17/94)
3. For payment of 1% Montana contractors tax (for the XYZ Construction Co. invoice) - \$500
4. Service connections - \$14,080 (See attached documentation).

5. Labor costs for time spent by Jim Davis, City Engineer, 6/24/94 through 7/31/94, 75 hours, reviewing engineering plans and inspecting work progress - \$1,000 (Note: time sheets are on file in City Clerk's office)
6. Labor costs for time spent by Kim Anderson, City laborer, 6/24/94 through 7/31/94, 20 hours, excavating service connections - \$400 (Note: time sheets are on file in City Clerk's office)

### **Overall Project Status (Both Administration and Construction):**

Since the last drawdown, an additional 3,000 linear feet of water line has been installed, inspected and covered for a total of 15,000 feet to date. Another 1,500 feet will be installed in the next month. Eighty new service connections have been completed since the last draw for a total to date of 100. The remaining 15 connections will be completed after the next 1,500 feet of water line is installed. Ninety percent of the water lines have been completed and 95 percent of all of the service connections have been completed.

None of the 12 fire hydrants have been installed to date. Installation will begin next month.

Construction has not yet started on the water tank or modifications to the treatment building. Acquisition of the land for the water tank will be completed this month, which is about a month behind schedule because of court appeals. Construction of the tank will begin as soon as possible next month. Construction costs are expected to increase by \$7,000 as a result of this delay and we plan to move that amount from the TSEP portion of the engineering budget, which is expected to be less than originally anticipated.

The majority of the project, with the exception of the water tank, is on schedule. The entire project is about 35 percent finished.

A cave-in occurred during the trenching of 5th Street. There were no injuries or fatalities. OSHA was notified. The project was shut down for two days while the accident was being investigated. It was determined that improper trenching procedures were being utilized and the problems were corrected before work resumed. No action was taken by OSHA other than to correct the problem.

A grant/loan was received from DNRC totaling \$100,000. The entire amount will be used to extend water lines to the south along the highway. This was not in the original scope of the project. This will require an additional month of construction, but the project should still be completed late this summer.

## EXHIBIT 4-E

### SAMPLE EXPENDITURE REVIEW FORM

The form shown below can be used to document the routine review and approval of project expenditures, before they are submitted to the financial officer for processing. Project expenditures should be reviewed, and this form signed by the grant administrator; however, if the grant administrator is a contractor, the form should be signed by a local official whenever the expenditure was incurred by the contractor. The "paper trail" resulting from the use of this type of form also documents a proper separation of duties and adequate internal control. The form should be attached to each invoice or request for payment.

#### PROJECT EXPENDITURE REVIEW FORM

Name of Vendor/Contractor  
Purpose of Expenditure Activity

Date of Invoice  
or Billings

Amount

1. Expenditure is an eligible use of TSEP funds according to project budget.  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Expenditure should be assigned to the \_\_\_\_\_ budget  
line item.
3. Sufficient funds are available for payment: Yes \_\_\_\_\_ No \_\_\_\_\_

The proposed expenditure meets the requirements of the TSEP and is authorized  
for payment.

\_\_\_\_\_ Grant Administrator

\_\_\_\_\_ Date



## EXHIBIT 4-F

### CHECKLIST FOR SUBMITTAL OF REQUEST FOR FUNDS

#### I. REQUEST FOR FUNDS FORM

- \_\_\_ Section I – TSEP Recipient Information completed, including the contract number, drawdown number, TSEP recipient address, bank address and account number, and total amount requested.
- \_\_\_ Section II – Financial Information completed, Columns A through D, Lines 1 through 5 (this should reflect TSEP budget only).
- \_\_\_ Section III – Local Approval completed, including: dates, **(original)** signatures and titles.
- \_\_\_ Copies of invoices, purchase orders, lease agreements, acquisition agreements, etc, when the amount of the TSEP portion of each individual expenditure is \$5,000 or more.
- \_\_\_ Copies of timesheets or other summary payroll information for work performed by city or county employees. At a minimum, include the name, title, time period that work was performed, total hours worked, activities performed, and total amount earned.

#### II. UNIFORM STATUS OF FUNDS SPREADSHEET

- \_\_\_ Copy of the current Uniform Status of Funds Spreadsheet. The amounts on the spreadsheet must match the amounts on the Request for Funds Form.

#### III. UNIFORM INVOICE TRACKING SPREADSHEET

- \_\_\_ Copy of the current Uniform Invoice Tracking Spreadsheet. At a minimum, the TSEP recipient must record all invoices from a consultant project manager, project engineer and construction contractor.

#### IV. PROJECT PROGRESS REPORT

- \_\_\_ Identification information completed, including: name of TSEP recipient, contract number, drawdown number, total amount requested, date.
- \_\_\_ Administration/Financial section completed, including: amount requested, brief description of the use of the funds requested for each line item. All expenditures

must be listed that have been paid in part or totally from TSEP funds, regardless of the amount. Summary payroll information for work performed by TSEP recipient's employees.

\_\_\_\_\_ Activity section completed, including: amount requested, brief description of the use of the funds requested for each line item. All expenditures must be listed that have been paid in part or totally from TSEP funds, regardless of the amount. Summary payroll information for work performed by TSEP recipient's employees.

\_\_\_\_\_ Project Status section completed, including a summary of the overall status of the project and any other information relevant to the implementation of project.

## **V. CERTIFICATION OF LABOR COMPLIANCE**

\_\_\_\_\_ When requesting TSEP funds to pay for construction expenses, attach a copy of the completed Certification of Labor Compliance with each request.



## DIRECTIONS FOR USING THE UNIFORM STATUS OF FUNDS SPREADSHEET ON THE COMPUTER (UNIBLAN2.XLS)

The purpose of the uniform status of funds spreadsheet is to provide a uniform method for local governments to track project expenditures on infrastructure projects using multiple federal, state, local, and private funding sources. All required calculations have been formatted into the spreadsheet.

**NOTE: Only the non-shaded cells require information to be input (if accessing through Excel these cells will appear in yellow). All other cells will automatically calculate.**

✓ Enter the name of the local government. The date will automatically fill in.

✓ Indicate funding sources for the project in the cell titled "Funding Source" including local funds:

This sheet separates administrative costs and activity costs and then totals them together for total project costs. Under each administrative cost and activity cost for **all funding sources** you must:

✓ Indicate the amount Budgeted (the amount budgeted with the particular funding source for this line item)

✓ Indicate the amount Previously Expended (the amount already spent through the particular funding source)

✓ Indicate the Amount of the Draw (the amount submitted via the current draw down to the particular funding source)

Note: To enter an amount, you only need to enter the number. You do not need to enter a "\$" or commas. You do need to enter a period to indicate an amount less than one dollar.

All totals for both columns and rows will be automatically calculated, including:

- Balance Remaining
- Total Budget: Budgeted
- Expended
- Balance
- Total Administrative Costs
- Total Activity Costs
- Total Project Costs

The spreadsheet has been formatted with a column width of "9.43" for columns that have numbers displayed. Depending on the amounts involved in your project you may need to widen columns so that your amounts will fit. Note that this may cause your spreadsheet to expand beyond a single page, and resulting in your spreadsheet being printed on two pages.

**Grantees may change categories on the spreadsheet to suit their needs. For example, CDBG draw forms have different categories under administration budget and activity costs. These categories can be changed to reflect the need of each project and grantees are not restricted to using the line items on the sample spreadsheet.**





# UNIFORM INVOICE TRACKING SPREADSHEET

**Project Administration Manual**  
**May 2003**

## DIRECTIONS FOR USING THE UNIFORM INVOICE TRACKING SPREADSHEET ON THE COMPUTER (UNIBLANK.XLS)

The purpose of the uniform invoice tracking spreadsheet is to provide a uniform method for local governments to track individual invoices on infrastructure projects using multiple federal, state, local, and private funding sources.

**Note: The non-shaded areas are the only areas that will be completed by the grantee. All other cells will automatically calculate.**

Enter the name of the local government. The date will automatically fill in.

### Vendor's Name

Place the name of the vendor (payee) in this space.

### Invoice or Pay Estimate Number

This is a number assigned by the vendor to the invoice or pay estimate that has been submitted to the local government for payment.

### Invoice Date or Time Period Covered

Put the date of the invoice in this space. If the time period to which the invoice pertains is more appropriate, place this information in this space.

### Total Amount of Invoice

This amount should be the "total" of the invoice. For instance, if the invoice is for \$500 and CDBG is paying \$200 and TSEP is paying \$300--\$500 should still be placed in this space.

Note: To enter an amount, you only need to enter the number. You do not need to enter a "\$" or commas. You do need to enter a period to indicate an amount less than one dollar.

### Warrant Number

The number on the warrant issued by the local government for payment of the invoice.

### Date Paid

The date on the warrant.

### Funding Source, Amount Expended, and Drawdown Number

Source--indicate the funding sources paying for each invoice--RD, SRF, TSEP, CDBG, Local, etc.

Amount--the amount expended by each funding source (indicated above) to pay for an invoice.

Number--indicate the number of the draw that was submitted to the particular funding source for payment of the indicated amount. For instance, the Contractor X invoice dated 11/08/98 was paid from CDBG funds obtained through the CDBG draw number one, RD funds obtained through RD draw number one, and TSEP funds obtained through TSEP draw number three.

### Total Amount Paid This Invoice

This figure will automatically be calculated. The figure should equal the amount in "Total Amount of Invoice" and should also equal the sum of the "Amounts" under the heading "Funding Source, Amount Expended, Drawdown Number."





EXHIBIT 4-K

CERTIFICATION OF LABOR COMPLIANCE

Date: \_\_\_\_\_ Pay Estimate Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

Project: \_\_\_\_\_

MT-TSEP Contract # \_\_\_\_\_

For the time period of the pay estimate referenced above and the actions completed as listed below, I hereby certify that to the best of my knowledge the above named contractor and \_\_\_\_\_ (sub-contractors) have complied with the labor requirements as set forth in the Montana Department of Commerce (MDOC) Treasure State Endowment Program (TSEP) Project Administration Manual including:

1. The prevailing wage rates were posted in a prominent and accessible site on the project or work area.
2. Weekly payroll reports covering the pay estimate referenced above were received and compared to the prevailing wage rates \_\_\_\_\_ Yes \_\_\_\_\_ No.
3. Errors or discrepancies were noted \_\_\_\_\_ Yes \_\_\_\_\_ No. If yes, explain error or discrepancy and how it was resolved.
4. Interviews of the contractor/sub-contractor's employees were conducted during the time period of the pay estimate \_\_\_\_\_ Yes \_\_\_\_\_ No. If yes, number of interviews conducted \_\_\_\_\_.
5. Information obtained through interviews with the contractor/subcontractor's employees was compared to the corresponding payroll \_\_\_\_\_ Yes \_\_\_\_\_ No.

\_\_\_\_\_  
Name of Person Responsible for Ensuring Compliance with Labor Requirements

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**CHAPTER 5**  
**Civil Rights Requirements**



## CHAPTER 5

### CIVIL RIGHTS

#### OVERVIEW

State civil rights requirements are intended to ensure equal opportunity and access to all of the benefits emanating from publicly financed programs such as TSEP. In general, these laws have the basic purpose of protecting people from discrimination on the basis of:

- . age
- . color
- . creed
- . marital status
- . national origin
- . physical or mental handicap
- . political ideas
- . race
- . religion
- . gender
- . family status (families with children)

Population groups specifically protected by the provisions of these laws include:

- . minorities (e.g., Blacks, Hispanics, American Indians);
- . women;
- . groups distinguished by age (e.g., elderly); and,
- . physically and mentally handicapped.

These groups (commonly referred to as "protected groups") are specifically protected from discrimination in the following areas:

- . **Housing:** Generally this includes the sale or rental of housing, and the financing, advertising or provision of brokerage services. However, there are other specific acts of discrimination which are equally illegal. Nondiscrimination requirements in this area are referred to as "Fair Housing;"

**Employment:** This requirement applies to government employment, employment by government contractors or subcontractors, and employment in all construction contracts funded in part or whole with public money. This area is referred to as "Equal Employment Opportunity;" and

**Participation in or Benefits Derived From TSEP Funded Activities:** This means that no one who is eligible may be excluded from participating in any activities nor may they be denied any benefits which result from activities funded in part or whole by TSEP money.

## APPLICABLE STATE REQUIREMENTS

Several state statutes contain civil rights provisions that apply to all programs spending public money.

Montana Human Rights Statutes: Portions of Title 49, Montana's human rights statutes, apply to the TSEP recipient's project activities.

In employment, Section 49-2-303, MCA adds marital status to the list of protected categories and identifies physical and mental handicaps as specific categories. Concerning maternal status, the Montana Maternity Act (part of the Montana Human Rights Statutes in Sections 49-2-310 and 49-2-311) prohibits certain employment actions related to pregnancy in the areas of employee leave and benefits.

In housing, Section 49-2-305, MCA lists protected groups which like employment, includes physical and mental handicaps.

In addition to Chapter 2 of Title 49 (Illegal Discrimination) in Montana's human rights statutes, Chapter 3 of Title 49, (Governmental Code of Fair Practices), establishes requirements regarding human rights that apply to state and local governments during the general operation of government and provisions of services or benefits, particularly in hiring and employment policies and practices. This chapter of state law lists race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin as protected groups.

Chapter 4 of Title 49 (rights of the Handicapped) establishes requirements and policies regarding handicapped persons and defines the rights of handicapped persons under state law, especially the right to nondiscrimination in employment and housing.

Montana's administrative rules implementing Title 49 contain minimum requirements. Administrative Rule 24.9.805 does require each employer subject to the U.S. Equal Employment Opportunity Commission (EEOC) (more than 15 employees) to maintain records on the gender, age, and race of employees. Those employers not subject to the

EEOC (less than 15 employees) are urged to maintain records on race and gender. Any records employers maintain must be kept on file for three years after project close-out. All employment records should be kept at least 6 months, including applications for employment.

Exhibit 5-A includes a table that summarizes the major state and federal civil rights and equal opportunity laws.



## EXHIBIT 5-A MAJOR DISCRIMINATION LAWS IN MONTANA

Major Employment Discriminations Laws	Employer Coverage	Summary	Enforcement Agency	Time Limit to File Complaint	Remarks
Montana Human Rights Act. Title 49, MCA Chapter 2	All employers except fraternal, charitable or religious employers which are nonprofit and do not provide services to nonmembers	Prohibits discrimination based on race, color, national origin, creed, religion, sex, pregnancy, marital status, age (all ages), physical or mental handicap and political beliefs. Prohibits retaliation for filing a complaint, testifying in a case or opposing discriminatory practices prohibited by the Human Rights Act.	Department of Labor and Industry (DOLI), Human Rights Bureau - Helena	180 days and possibly up to 300 days if a formal grievance is pursued first.	Political belief discrimination is prohibited only for state and local governmental employers. Maternity leave provisions require employers to grant a reasonable leave of absence or disability associated with pregnancy and to reinstate at the end of leave. Also prohibits discrimination in housing, credit, public accommodations, education, government services and insurance.
Montana Governmental Code of Fair Practices, Title 49, MCA, Chapter 3	All public employers	All of the above	Department of Labor and Industry (DOLI), Human Rights Bureau – Helena.	Same as above	Also prohibits discrimination in employment referrals and placement services, educational counseling and training programs, licensing, governmental services, distribution of government funds, and public contracts.
Title VII of the Federal Civil Rights Act of 1964, as amended, Title 42, U.S.C. Sec. 2000e	Most employers of 15 or more	Prohibits discrimination based on race, sex, color, religion, national origin, and retaliation for filing a complaint, testifying or opposing discriminatory practices prohibited by Title VII.	EEOC - Denver or Department of Labor and Industry (DOLI), Human Rights Bureau – Helena.	180 days or 300 days if filed first with Department of Labor and Industry (DOLI), Human Rights Bureau - Helena.	EEOC must, under Section 706, defer to state proceedings first.
Federal Age Discrimination in Employment Act of 1967, as amended Title 29, U.S.C., Sec. 621, et.seq.	Private employers of 20+, most public employers	Prohibits discrimination based on age for individuals 40 and over. Prohibits retaliation for filing a complaint, testifying in a case, or opposing practices prohibited by the Age Discrimination in Employment Act.	EEOC – Denver or Department of Labor and Industry (DOLI), Human Rights Bureau – Helena.	180 days or 300 days if filed first with Department of Labor and Industry (DOLI), Human Rights Bureau - Helena.	

Federal Equal Pay Act of 1963, Title 29, U.S.C. Sec. 206(d)(1)	Most private and public employees	Prohibits sex-based differentials in wages. Prohibits retaliation for filing a complaint or testifying in a case under the Equal Pay Act.	EEOC – Denver or Department of Labor and Industry (DOLI), Human Rights Bureau - Helena	Two years; three years if willful	Applies to jobs equal in skill, effort, responsibility performed under similar working conditions.
Federal Rehabilitation Act of 1973, Section 503 and 504	See Remarks	Prohibits discrimination against qualified handicapped persons in employment and programs.	Sec. 503 – OFCCP Denver Sec. 504 – Granting Agency.	180 days	Sec. 503 covers employment under Federal contracts. Sec. 504 covers non-discrimination in all areas by recipients of federal financial assistance.
Americans with Disabilities Act, Title I-IV	Prohibits discrimination on the basis of disability in private sector employment, services provided by State and local governments, places of public accommodations, transportation and communication services.	Prohibits discrimination against individuals in the full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations of any place of public accommodations.	EEOC – Denver or Department of Labor and Industry (DOLI), Human Rights Bureau – Helena.		





## CHAPTER 6

### LABOR REQUIREMENTS

#### OVERVIEW

This chapter provides an overview of state labor requirements that govern the payment of wages for laborers and mechanics employed under construction contracts funded in whole or in part by TSEP funds.

**If federal funds will be used to help fund a TSEP funded public facilities project, the federal labor requirements may supersede those of the state. The pertinent federal labor requirements vary among federal agencies. For example:**

- the Community Development Block Grant (CDBG) program requires compliance with the federal Davis-Bacon Act, while
- the U.S. Department of Agriculture, Rural Development program, and the two State Revolving Fund (SRF) programs, do not require local governments to use the federal Davis-Bacon prevailing wage rates.

**If federal funds will be involved in your TSEP project, you should consult with each of the federal agencies funding the project for guidance on which federal labor laws or regulations will apply to your project.**

#### APPLICABLE STATE REQUIREMENTS

The following laws provide the statutory authority for the state requirements related to workers' wages and hours on projects receiving TSEP assistance:

Public Construction Contracts: Special Labor Conditions (Title 18, Chapter 2, Part 4, MCA) includes special labor requirements applicable to state or local public works projects:

Section 18-2-402, MCA, provides for the Montana Commissioner of Labor to determine the prevailing wages that will apply to public works projects which are not subject to the federal prevailing wage law, the Davis-Bacon Act. The Montana prevailing wage law is often referred to as the "Little Davis-Bacon Act."

Under the provisions of the Montana law, the Montana Department of Labor and Industry (MDLI) periodically surveys the wages being paid in the construction industry statewide and determines the average wages, including fringe benefits, being paid for similar types of construction work on public projects. The prevailing wage rates set by MDLI cannot be

greater than the wage rates in the area which have been negotiated under current collective bargaining agreements (union scale).

Section 18-2-403, MCA, requires that a preference for the hiring of Montana residents for construction work be included in all bid specifications and contracts for public works projects that are not subject to federal requirements that prohibit such preferences.

This section also requires the payment of prevailing wages, including fringe benefits, and travel allowances for workers on all public works projects. **All bid specifications and contracts for public works projects must include the prevailing wage rates, including fringe benefits, which the contractors and subcontractors must pay for each job classification during construction of the project.** At a minimum, contractors must pay the prevailing wage rates unless the workers are covered by a collective bargaining agreement that provides higher wage rates. **The law also provides that if a public agency or local government fails to include the prevailing wage rate requirements in a bid specification or contract, the contractor is relieved from the obligation to pay the prevailing wage rate and the obligation is then placed on the public contracting agency.**

Section 18-2-404, MCA, requires that the legal adviser for the contracting public agency (in this case, the TSEP recipient) must approve all public works contracts in writing. It also provides that at least \$1,000 of the contract price must be withheld until termination of the contract.

Section 18-2-406, MCA, requires that all contractors and subcontractors working on a public works contract must post the prevailing wage rates to be paid to employees in a prominent and accessible site on the project or work area not later than the first day of work.

Section 18-2-407, MCA, was amended in 1993 to provide that any contractor, subcontractor, or employer who pays an employee less than the required prevailing wage must pay the MDLI a penalty of up to 20% of the delinquent wages and fringe benefits plus court or attorney fees and audit fees. They must also pay the employee the wages owed plus \$25 a day for each day the employee was underpaid.

Section 18-2-412, MCA, was amended in 1993 to allow contractors and subcontractors to pay the standard prevailing wage rates using one of three methods:

1. pay the amount of the fringe benefits and the basic hourly rate directly to the worker in cash;
2. make an irrevocable contribution to a trustee or third person pursuant to a fringe benefit fund plan or program that meets the requirements of the

Employee Retirement Income Security Act (ERISA) of 1974 or that is a bona fide program approved by the U.S. Department of Labor; or

3. make payments using a combination of 1 or 2, above, so the aggregate of cash payments and contributions is no less than the standard prevailing rate of wages, including fringe benefits for health, welfare, pension contributions that meet the requirements of the ERISA of 1974, travel, and other programs approved by the United States Department of Labor.

Section 18-2-422, MCA, requires that all public works contracts and the bid specifications for those contracts must contain:

1. a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that contractors and employers shall pay during construction of the project,
2. a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for not less than three years after the contractor's completion of work on the project, and
3. a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-423, MCA.

Section 18-2-423, MCA, was amended in 1993 to require contractors and subcontractors to pay employees receiving an hourly wage on a weekly basis.

Section 18-2-432, MCA, provides that a contractor or subcontractor who is found by MDLI to have willfully violated the law can be barred from receiving public works contracts or subcontracts for a three-year period.

Workers' Compensation Act (Title 39, Chapter 71, Part 1, MCA) requires employers to provide workers' compensation insurance to assure wage supplements and medical benefits for works suffering from work-related injury or disease.

The above is a brief summary of Montana's major labor laws. Local officials and staff or TSEP project consultants should always consult the actual text of current Montana law if any questions arise. For guidance on application of Montana's prevailing wage law you should also contact:

Labor Standards Bureau  
Montana Department of Labor and Industry  
PO Box 6518  
Helena, MT 59604

## **TSEP RECIPIENT RESPONSIBILITIES**

TSEP funded construction projects require that the TSEP recipient take the following actions to ensure that all requirements related to labor standards are satisfied.

### **Step 1 - Designate a Person to Monitor Prevailing Wage Compliance**

Compliance with the applicable state prevailing wage provisions by TSEP recipients is a condition for receipt of TSEP assistance. Accordingly, each TSEP recipient must identify a person who will be responsible for prevailing wage compliance in the TSEP recipient's project management plan, as discussed in Chapter 1, Project Startup. In most cases this will be the grant administrator who has been assigned overall administrative responsibility. In some cases, the project engineer may agree to oversee prevailing wage compliance.

### **Step 2 - Include Prevailing Wage Rates and Provisions in Bid Documents**

The bid documents, including engineering plans and specifications, are normally prepared by the TSEP recipient's project engineer. **Montana's prevailing wage law requires that a prevailing wage clause be included in all solicitations for bids and contracts for projects. In addition, all bid specifications and contracts for public works projects must include the prevailing wage rates, including fringe benefits, which the contractors and subcontractors must pay for each job classification during construction of the project.** Specific bid and contract language and certifications are provided in the TSEP Supplemental General Conditions, which appears as Exhibit 8-A, Chapter 8, Public Facilities Construction Management.

### **Step 3 - Request Wage Rate Determination**

A request for wage determination should be submitted within 90 days of the scheduled bid opening date. The request can be made by a letter or telephone call to the MDOC TSEP staff assigned as liaison for your project. If you request the wage determination by telephone be sure to make and retain notes indicating the date and time of your request to MDOC. (Exhibit 6-A).

Wage rate determinations are issued by the MDLI every year for both "Heavy and Highway" and "Building" wage rates (see Exhibit 6-B for an example of a MDLI wage determination).

Under ARM 24.17.127, the wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised. For this reason, the TSEP

recipient's grant administrator should contact MDOC approximately two weeks prior to bid advertising to re-verify that the wage determination is still current.

Wage rate determinations are meant to be all-inclusive and representative of an area's prevailing basic wage and fringe benefits for every type of job classification of laborers and mechanics within their respective industry category. State "Heavy and Highway" wage rates are issued on an area basis according to the job classification involved. "Building" construction wage rates are issued according to ten state districts. Wage rates will vary according to the different zones or areas designated within the state and the groups of similar job classifications, such as equipment operators. Therefore, to apply the correct determination it is very important that your TSEP liaison be provided the following information:

- . estimated contract cost;
- . type of work (e.g., installation of waterlines, building construction, etc.)
- . project location; and
- . anticipated bid opening date.

The TSEP liaison for your project will forward a copy of the current applicable determination for inclusion in the bid document. In many cases, TSEP projects will use only the Heavy and Highway prevailing wage rates. However, in certain cases, both the Heavy and Highway, and Building wage rates must be included in the bid document by the project engineer. A guideline, referred to as the "20% Test", can generally be followed to determine when both Heavy and Highway, and Building prevailing wage rates should be used for TSEP-funded construction contracts. This "rule-of-thumb" provides that if building construction is a "significant component" of the project, (the budget for building construction exceeds 20% of the total anticipated construction contract amount), then the project engineer should include both Heavy and Highway, and Building rates in the bid document. The same "20% Test" concept would apply to a public facility project which is principally building construction, such as a sewage treatment plant, but which also includes more than 20% of non-building construction activity. In such cases, the project engineer should include both Building, and Heavy and Highway prevailing wage rates in the bid document. This is a guideline, not a rigid requirement. If your project appears to fall under this "20%" test, consult your TSEP liaison for guidance.

In the event the construction project will involve laborers or mechanics with job classifications which do not appear on the MDLI wage determination, the TSEP recipient's grant administrator must make a request to MDLI for an appropriate job classification and determination of the prevailing wage rate.

#### **Step 4 - Verify Bidder Eligibility**

Contractors or subcontractors found by the MDLI to have aggravatedly or willfully violated the provision of the state prevailing wage law may be barred from receiving contracts or subcontracts subject to the provisions of the law for a period not to exceed three years after the date of entry of a final judgment. **TSEP recipients must contact their TSEP liaison to obtain clearance on all proposed prime contractors and subcontractors prior to awarding any TSEP funded contracts.** As soon as possible following the bid opening, and before awarding any construction contract, your TSEP liaison should be given the names of the firm and its principal owner(s) selected for the pending contract to determine if that contractor has been debarred under Montana law. (See sample letter, Exhibit 6-C.) If the contractor is determined to be ineligible, you may offer the contract to the first alternate bidder or may reopen the bidding procedures. A copy of any correspondence sent or received from MDOC or notes taken for telephone contacts with MDOC should be retained to document this step.

#### **Step 5 - Inform Contractor of Applicable Requirements by Conducting a Preconstruction Conference**

Following the contract award for construction projects involving TSEP funds, the TSEP recipient must hold a preconstruction conference. The TSEP recipient and prime contractor should include all subcontractors in the discussions to ensure that they are aware that they must also comply with the prevailing wage and equal employment opportunity provisions. The engineer will attend the conference to cover the technical or other contract-related issues for the TSEP recipient. The TSEP recipient's grant administrator will then cover the state and local compliance issues.

The preconstruction conference represents a key opportunity prior to the beginning of project construction for giving instructions to the contractor. A well-planned and executed conference can help prevent problems and misunderstandings that could delay the project at a later date.

To assist TSEP recipients in preparing for and conducting the required preconstruction conferences for TSEP-funded construction contracts, a Preconstruction Conference Planning Guide (Exhibit 6-D) has been provided. This contains guidance for conference preparation, a general format to be used as an agenda, supplemental information on labor standards and civil rights requirements, and a blank conference checklist and agenda which can be followed to record minutes for the conference.

At a minimum, the preconstruction conference should include discussions of:

- prevailing wage requirements, including posting prevailing wages continually at the job site;

- . employment of apprentices or trainees;
- . weekly pay for employees;
- . submission of weekly payrolls;
- . penalties if prevailing wage requirements are not complied with;
- . payment of overtime;
- . equal employment opportunity requirements;
- . employment of Montana workers; and
- . the use of bona fide, registered subcontractors.

In order to document discussions that occur during the preconstruction conference, the TSEP recipient is required to record minutes of the conference. A verbatim record is not necessary; the names of the persons who attend and a summary of the comments and issues covered are sufficient. The TSEP recipient's grant administrator should ensure that a copy of the preconstruction conference minutes is on file and sent to the TSEP liaison. **Copies of pages 6-D.3 through 6-D.8 should be provided to each contractor and subcontractor representative that attends the preconstruction conference as well as a summary of the key labor requirements that must be complied with.**

**In accordance with Montana's prevailing wage law, a copy of the prevailing wage rates must be posted at the construction site at all times, beginning with the first day of construction work. It must be posted in a prominent and easily accessible location on the project site.**

Contractor reporting requirements include:

- . Weekly Payroll Reports, which must be submitted weekly by both the prime contractor and subcontractor(s); and
- . Notice of Approved Apprenticeship or Trainee Program, which must also be submitted, if applicable.

Contractors must use the standard U.S. Department of Labor (DOL), Payroll Form WH-347 (See sample Form WH-347, Exhibit 6-E), or an equivalent form. The text of the "weekly statement with respect to the payment of wages," which is required by regulations of the Secretary of Labor, appears on the reverse side of the DOL form. Many contractors now use computerized weekly payrolls in lieu of the standard Payroll Form WH-347. This is acceptable as long as the basic information contained on the WH-347 is provided and the

contractor includes a signed certification for each payroll by using the "Statement of Compliance" Form WH-348 (See sample Form WH-348, Exhibit 6-E).

Exhibit 6-E, Weekly Payroll Report Forms: WH-347 and WH-348, not only contains samples of these forms but examples and instructions for the contractor to follow for completing and filing them on the project. For example, the TSEP recipient should be aware that weekly payroll reports are required from subcontractors identified as "working owners". (See paragraph #7 on page 6-E.5). A "sole-proprietor", who performs alone on the project or owners, partners or relatives, will still submit weekly payrolls showing himself or herself as "owner" or "partner", the work classification and the daily and total hours worked. See Exhibit 6-D for additional discussion of requirements applicable to subcontractors and sole proprietors.

To provide additional detailed guidance to contractors for the proper completion and use of the above weekly payroll reports, Contractor Payroll Instructions are provided as Exhibit 6-F. The U.S. Department of Labor payroll forms can be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 80402.

### **Step 6 - Monitor Contractor Performance**

It is the local TSEP grant administrator's responsibility to monitor construction contracts to ensure that current prevailing wages are posted prominently at the construction site, that the contractor's weekly payroll reports are accurate and submitted weekly as required, and that the contractor is complying with applicable labor requirements. This monitoring function can be accomplished through the following activities:

- **on-site inspections to ensure that required notices and copies of the applicable prevailing wage rates are posted and easily accessible to workers.** For posting the required prevailing wages at the job site, the contractor can use a bulletin board attached to the side of a temporary field office or storage trailer or a plywood billboard located near the site of field construction activities. The current wage rates can be placed in a plastic covering to protect them from weather. Regardless of the method used, it is the contractor's responsibility to provide reasonable access for employees to a copy of the state prevailing wage rates. The contractor's employees should not have to request to see a copy of the wage rates.

- **comparison of weekly payroll reports to the required prevailing wage rates.** Payroll reports must be submitted by the contractor within seven days following completion of the work week and should be reviewed by the TSEP recipient's grant administrator on a timely basis, usually within one week of receipt. At a minimum, the TSEP recipient's grant administrator should initial and date each payroll to document that the payroll review has been

completed. Any errors or discrepancies should be noted on the payroll form. Also, contractors may use a numerical code system for reporting job classifications on their payroll form. If a numerical code system is used, the TSEP recipient's grant administrator should ensure that the contractor submits a copy of the numerical code system with the initial payroll report. The codes on the payroll should be checked to ensure that they appear to accurately reflect the actual duties of workers at the job site.

**interviews with construction employees.** The TSEP recipient's grant administrator must ensure that the employees of each of the contractors or subcontractors are being properly paid. This is done by interviewing the employees of each contractor or subcontractor on the project, and comparing the information obtained from those interviews to the corresponding payrolls. In order to ensure that employees of each of the contractors or subcontractors are being interviewed, the grant administrator should coordinate with the on-site engineer or superintendent to know when each of the contractors or subcontractors are expected to be on the project site. It is not critical that each individual employee is interviewed, however, over the course of a project, **interviews should be conducted with a representative of each classification of laborers or mechanics from each contractor or subcontractor on the project site, and at least 10 percent of the construction workforce should be interviewed during the term of the project.** In order to avoid potential problems, the grant administrator should, at a minimum, visit the project site at least every other week in order to conduct interviews.

The form to be used for construction employee interviews, instructions for conducting the interviews, a completed sample interview form, and instructions for finding the appropriate wage rate based on the sample interview are provided as Exhibit 6-G.

Additional guidance on payroll review, interviewing contractors' employees, and a summary of frequently used terms relating to prevailing wage compliance is provided in Exhibit 6-H.

As mentioned in Step 8, you must maintain adequate records to demonstrate that state prevailing wage requirements have been complied with. When monitoring the project, MDOC will review the records to determine whether the grant recipient has taken appropriate steps to ensure that state prevailing wage requirements have been complied with.

## **Step 7 - Investigate Labor Complaints and Violations**

Violations of prevailing wage or other labor requirements may surface as the result of either monitoring or through a specific complaint by a construction worker. In either instance, TSEP recipients are responsible for investigating and documenting the alleged violation.

If a violation is evident, the grant administrator should first work with the contractor on an informal basis to resolve the problem and allow a reasonable time for correction. Where the contractor refuses to address the violation or continues to violate the labor requirements, the TSEP liaison and MDLI should be promptly notified in writing of the violation. The contractor should be informed that an unresolved prevailing wage violation could result in monetary penalties and make the contractor ineligible to work on public works construction projects in the future.

## **Step 8 - Maintain Prevailing Wage Files**

For each construction contract, a prevailing wage file should be maintained which includes the following items:

- . a copy of all applicable wage rate decisions;
- . evidence that prevailing wage provisions are included in bid packages and contracts;
- . telephone notes or correspondence regarding contractor eligibility;
- . a copy of the preconstruction conference minutes;
- . evidence that required prevailing wage notices have been continually posted at the construction site;
- . the contractor's weekly payroll reports (numbered sequentially and the final one marked "Final");
- . evidence that the weekly payroll reports have been promptly reviewed and verified as correct;
- . records of construction worker interviews;
- . evidence of any violations with supporting documentation; and
- . evidence of the resolution of any violations.

## SUMMARY

Compliance with state prevailing wage requirements is the responsibility of all TSEP recipients. Accordingly, TSEP recipients are responsible for ensuring compliance with prevailing wage requirements by:

1. Before the start of construction, designating a local staff person or consultant to ensure compliance with state prevailing wage requirements and to act as liaison with the contractor and MDOC (see Step 1);
2. Ensuring that all bid documents, contracts and subcontracts contain applicable prevailing wage provisions and the current state wage determination(s), and that all contractors and subcontractors are not currently debarred from working on Montana public works projects. (See Steps 2, 3, 4, and 5);
3. Conducting a preconstruction conference to inform all contractors and subcontractors performing contract construction work of their prevailing wage and other labor obligations (see Step 6);
4. Conducting on-site project inspections which include employee interviews and checking for posting of current wage determinations at the project site (see Step 7);
5. Reviewing weekly payrolls for correctness (see Step 7);
6. Resolving all labor violations promptly (see Step 8); and
7. Maintaining detailed records to document all administrative and enforcement activities with respect to labor requirements including weekly payrolls, wage determinations, notices of start of construction, on-site inspection and employee interview reports, preconstruction conference minutes, and enforcement actions such as wage restitution (see Step 8).

## CHAPTER 6

### EXHIBITS

- 6-A Request for Wage Determination
- 6-B Montana Prevailing Wage Rates
- 6-C Request for Verification of Bidder Eligibility
- 6-D Preconstruction Conference Planning Guide
- 6-E Weekly Payroll Report Forms: WH-347 and, Statement of Compliance, WH-348
- 6-F Contractor Payroll Instructions
- 6-G Prevailing Wage Employee Interview Form
- 6-H Prevailing Wage Compliance Terminology

## EXHIBIT 6-A

### REQUEST FOR WAGE DETERMINATION

(Date)

Montana Department of Commerce  
Community Development Division  
301 South Park Avenue  
PO Box 200523  
Helena, MT 59620-0523

RE: TSEP Project # MT-TSEP-\_\_\_\_\_

The (name of TSEP recipient: City, Town or County of \_\_\_\_\_) is preparing to go to bid for a contract involving FY 20\_\_ Montana Treasure State Endowment Program (TSEP) funds. The project involves:

- (brief description of activities);
- (estimate amount); and
- (projected date of bid opening).

Please send a copy of the current wage determination that will apply to this project.

Sincerely,

(signature)

Typed Name

TSEP Project Manager

Mailing Address

Telephone Number



## **EXHIBIT 6-B**

### **MONTANA PREVAILING WAGE RATES**

Attached are the first few pages of a Montana Department of Labor and Industry prevailing wage determination and may not be current. For a current copy of the applicable wage determination contact MDOC TSEP staff or:

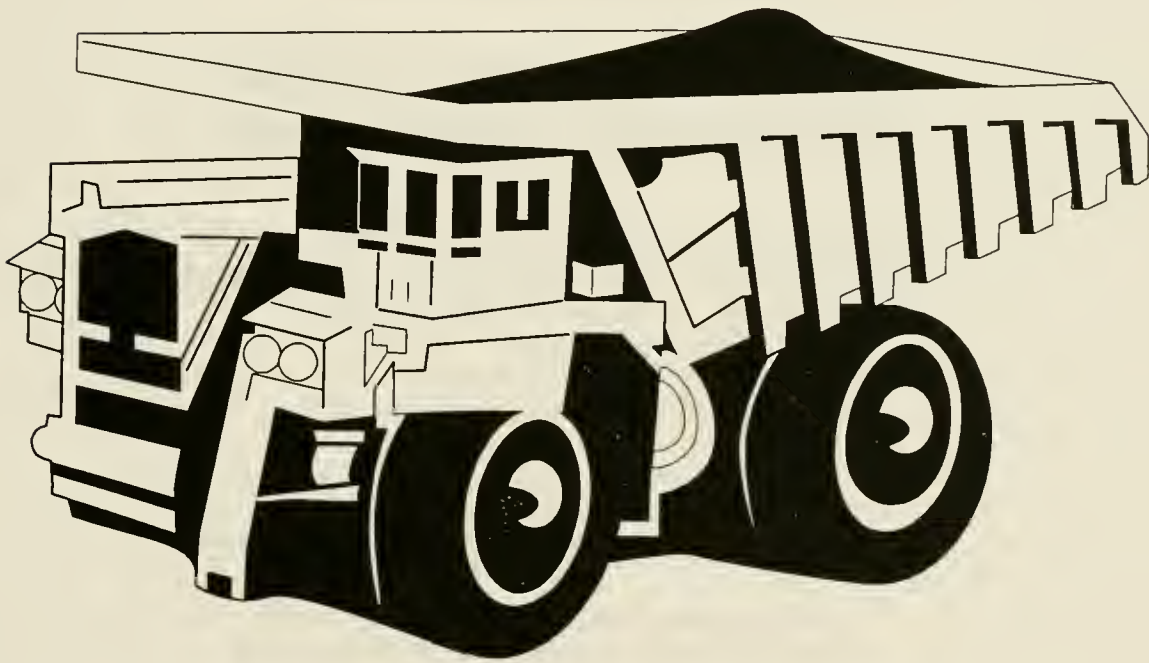
Labor Standards Bureau  
Montana Department of Labor and Industry  
PO Box 1728  
Helena, MT 59624

Telephone: (406) 444-5600

Internet: <http://rad.dli.state.mt.us/pw/>



**MONTANA 2002  
HEAVY AND HIGHWAY  
CONSTRUCTION  
Prevailing Wage Rate Book**



**Rates Effective August 1, 2002**

Published by the Research and Analysis Bureau  
Workforce Services Division  
Montana Department of Labor and Industry



# **MONTANA PREVAILING WAGE RATES**

## **Heavy and Highway Construction**

***Rates Effective August 1, 2002***

**State of Montana  
Judy Martz, Governor**

**Department of Labor & Industry  
Wendy Keating, Commissioner**

To obtain copies of prevailing wage rate schedules, contact:  
Research and Analysis Bureau, Workforce Services Division  
Montana Department of Labor and Industry  
P. O. Box 1728, 840 Helena Ave.  
Helena, MT 59624-1728  
Phone 406-444-2430 FAX 406-444-2638

Toll free 800-541-3904  
TDD 406-444-0532

**We're also on the Internet at: <http://rad.dli.state.mt.us/>**

For information relating to public works projects  
and payment of prevailing wage rates visit ERD at:

**<http://erd.dli.state.mt.us/LaborStandards/LShome.htm> or contact them at:**

Employment Relations Division  
Montana Department of Labor and Industry  
P. O. Box 6518  
Helena, MT 59604-6518  
Phone 406-444-5600  
TDD 406-444-5549

As always, the Research and Analysis Bureau welcomes questions, comments and suggestions from the public. In addition, we'll do our best to provide information in accessible format, on request, in compliance with the Americans with Disabilities Act.

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# MONTANA PREVAILING WAGE REQUIREMENTS

## Heavy and Highway Construction

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### Rates Effective August 1, 2002

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The Commissioner of the Department of Labor and Industry, in accordance with Sections 18-2-401 and 18-2-402 of the Montana Code Annotated, has determined the standard prevailing rate of wages for the occupations listed in this publication.

The wages specified herein control the prevailing rate of wages for the purposes of 18-2-401, et seq., Montana Code Annotated. It is required that each employer pay, as a minimum, the rate of wages, including fringe benefits and zone pay applicable for the work being performed, as provided in the attached wage determinations.

All Montana Prevailing Wage Rates are available on the Internet at <http://rad.dli.state.mt.us/pw/> or by contacting the Research and Analysis Bureau at (800) 541-3904 or TDD (406) 444-0532.

In addition, this publication provides general information concerning compliance with Montana's Prevailing Wage Law and payment of prevailing wages. For detailed compliance information relating to public works projects and payment of prevailing wage rates, please consult the Regulations on the Internet at <http://erd.dli.state.mt.us/LaborStandards/LShome.htm>, or contact the Labor Standards Bureau at (406) 444-5600 or TDD (406) 444-5549.



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WENDY KEATING  
Commissioner  
Department of Labor and Industry  
State of Montana

**A. Date of Publication: August 1, 2002**

**B. Definition of Heavy/Highway Construction**

For the purposes of Prevailing Wage, the Commissioner of Labor and Industry has determined that the rates for "heavy and highway" occupations are those rates that pertain to projects involved in construction fields other than building and residential. Federal Davis-Bacon wage rates as published in U.S. Department of Labor General Wage Decision No. MT020001 Modification No. 1 and MT020002 Modification No. 1 have been adopted by the Montana Department of Labor and Industry for use in heavy and highway construction projects and are included in this publication. These rates apply statewide or as shown in General Wage Decision No. MT020001 Modification No. 1 and MT020002 Modification No. 1.

**C. Definition of Public Works Projects**

Contracts entered into for construction services (heavy, highway and building) or nonconstruction services by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is \$25,000 or more involving public funds.

**D. Prevailing Wage Schedule**

This publication covers only heavy and highway construction industries and rates in the specific localities mentioned herein. These rates will remain in effect until superseded by a more current publication. Current prevailing wage rate schedules for Building Construction and Nonconstruction Services occupations can be found on the Internet at: <http://rad.dli.state.mt.us/pw/> or by contacting the Research and Analysis Bureau at (800) 541-3904 or TDD (406) 444-0532.

**E. Fringe Benefits**

Section 18-2-412 of the Montana Code Annotated states that:

"(1)... a contractor or subcontractor may: (a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the

standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, travel, or other bona fide programs approved by the United States department of labor, that is applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor."

Employers are obligated to pay the wage rates and fringes as listed in the booklet, including the zone hourly rate when applicable. For heavy and highway construction occupations, the vacation benefit amount is not included in the prevailing wage rate, unless stated otherwise.

Fringe benefits are paid for all hours worked (straight time and overtime hours). However, fringe benefits are not to be considered a part of the hourly rate of pay for calculating overtime, unless there is a collectively bargained agreement in effect that specifies otherwise.

## **F. Apprentices**

Wage rates for apprentices registered in approved federal or state apprenticeship programs are contained in those programs. However, apprentices not registered in approved federal or state apprenticeship programs will be paid the prevailing wage rate when working on a public works contract.

### **G. Posting Notice of Prevailing Wages**

Section 18-2-406, Montana Code Annotated, provides that contractors, subcontractors, and employers who are performing work or providing services under public works contracts as provided in this part shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees on such site or work area.

### **H. Employment Preference**

Section 18-2-403, Montana Code Annotated requires contractors to give preference to the employment of bona fide Montana residents in the performance of work on public works contracts.

### **I. Rates to Use for Projects**

Rates to be used on a public works project are those that are in effect at the time the project and bid specifications are advertised.

**MONTANA STATEWIDE PREVAILING  
DAVIS-BACON  
HEAVY CONSTRUCTION WAGE RATES**

General Wage Determinations Issued Under  
the Davis-Bacon and Related Acts

General Decision Number MT 020001 Modification No. 1

County (ies):  
Statewide

County(ies):  
STATEWIDE

#### ZONE DEFINITIONS

CARPENTERS, \*CEMENT MASONS, LABORERS, POWER EQUIPMENT OPERATORS,  
AND TRUCK DRIVERS

The zone hourly rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Courthouse of the following listed towns to the center of the job:

Billings	Great Falls	Kalispell	Missoula
Bozeman	Havre	Lewistown	
Butte	Helena	Miles City	

ZONE 1:	0 to 30 miles	Base Pay
ZONE 2:	30 to 60 miles	Base Pay + \$2.20
ZONE 3:	Over 60 miles	Base Pay + \$3.70

\*CEMENT MASONS ZONES: The above cities plus  
DILLON            GLASGOW            GLENDIVE            SIDNEY

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EXHIBIT 6-C

REQUEST FOR VERIFICATION OF BIDDER ELIGIBILITY

(Date)

Montana Department of Commerce  
Community Development Division  
301 South Park Avenue  
PO Box 200523  
Helena, MT 59620-0523

RE: TSEP Project # MT-TSEP-\_\_\_\_\_

The (name of TSEP recipient: City, Town or County of \_\_\_\_\_) opened bids for the construction on the (name of project) on (date of bid opening) and would like clearance on the (lowest bidder or two lowest bidders). Please verify the eligibility of the following contractor(s) under the provisions of Section 18-2-432(2), MCA:

(Provide business name(s), name of owners (principals or partners), and business address)

Sincerely,

(signature)

TSEP Grant Administrator  
Mailing Address  
Telephone Number



## EXHIBIT 6-D

### PRECONSTRUCTION CONFERENCE PLANNING GUIDE

#### PRE-CONFERENCE PLANNING

1. **Identify and notify conference participants of the time and place of the preconstruction conference**
2. **Prepare the materials that will be needed for the conference** (e.g. agenda, notes, forms and posters, roster of expected participants, and current wage determination)
3. **Organize the materials into individual packets for each conference participant**

#### PRECONSTRUCTION CONFERENCE MODEL AGENDA

1. **Identify the official representatives of participating organizations**, including names, titles, business addresses, and telephone numbers for an official roster (include with minutes)
2. **Describe the responsibilities of the engineer or architect**, if applicable (responsibilities may include construction supervision, initial review of contractor payrolls, and certification of partial payment requests, etc.)
3. **Describe the responsibilities of the TSEP recipient (local government)** (responsibilities may include on-site employee interviews, posting of appropriate posters, and resolution of labor complaints, etc.)
4. **Describe the responsibilities of the contractor** (responsibilities include conformance to prevailing wage determination; assurance that subcontractors are bona fide subcontractors in compliance with Montana contractors licensing, wage and benefits bonding, and workers' compensation and unemployment insurance requirements; other applicable labor and civil rights requirements; and timely submission of required weekly payrolls, etc.)
5. **Outline and discuss contract terms** (e.g. timing of requests for partial payments, etc.)
6. **Outline and discuss schedule for construction completion** (contractor should provide timeframes for sequences of major construction activities from beginning of construction to final project completion)

7. **Describe the responsibilities of subcontractors** (primarily the same responsibilities as contractor e.g. prevailing wage rates, civil rights requirements, and compliance with Montana contractors licensing and workers' compensation and unemployment insurance requirements, etc.)
8. **Describe project inspection procedures** (responsibilities of TSEP recipient's Grant administrator for prevailing wage interviews, and engineer/architect for construction oversight should be discussed)
9. **Describe forms the contractor must submit** (refer to checklist supplement)

## PRECONSTRUCTION CONFERENCE PLANNING GUIDE SUPPLEMENT

### LABOR AND CIVIL RIGHTS REQUIREMENTS

The TSEP recipient should include the following information concerning compliance with state labor and civil rights requirements during preconstruction conferences for construction projects involving TSEP funds.

#### A. WAGE DETERMINATION AND EMPLOYEE CLASSIFICATION

**Montana's prevailing wage law is applicable to all public works construction contracts awarded by TSEP recipients unless the state's requirements are pre-empted by the federal Davis-Bacon Act.**

1. Laborers, mechanics, apprentices, and trainees must receive no less than the prevailing wages, plus fringe benefits paid for similar work in the locality. (Conference participants should be provided with a copy of the current state wage determination that has been established by the Montana Department of Labor and Industry (MDLI) and included in the contract document.)
  - a. Workers are covered by Montana prevailing wage law while engaged in working at the site (see definition "site of work").
  - b. Apprentices or trainees may be paid less than journeyman wages, if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor (or State Apprentice Council recognized by the Department of Labor's Employment and Training Administration).
  - c. Montana law requires that all contractors and subcontractors working on a public works contract must post the current prevailing wages rates to be paid to employees in a prominent and accessible site on the project or work area not later than the first day of work.
2. If the contractor needs laborers or mechanics whose classifications do not appear on the state wage determination the local TSEP Grant administrator must make a request for an appropriate classification to the MDLI Research and Analysis Bureau (telephone: 444-2430). The MDLI staff will then provide a wage rate determination for the unclassified position.
3. Employees or supervisors working at other than their assigned classifications for 20 percent or more of their time must be paid and shown on the payrolls for each classification or, paid for all hours at the higher wage scale.

4. If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.
5. Claims and disputes should be reported in writing to the MDLI Labor Standards Bureau and to the MDOC TSEP staff liaison. Resolution of all claims and disputes must be reported to the MDLI. MDLI may be called upon to investigate and settle claims and disputes, or may enter of their own volition if the need arises.
6. Laborers and mechanics must be paid no less than once per week.

B. WORK HOURS, OVERTIME, AND SAFETY STANDARDS

1. Eight hours is the standard workday, forty hours is the standard workweek.
2. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over forty in a work week. Note that the basic hourly rate of pay = the base hourly pay rate + zone hourly pay rate. Fringe is not included in the basic hourly rate of pay when computing overtime.
3. No worker can be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health and safety. The Federal Occupational Safety and Health Act of 1970 provides job safety and health protection for workers through the promotion of safe and healthful working conditions throughout the Nation. The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor has the primary responsibility for enforcing the Act. Requirements of the Act include the following:
  - (a) Each employer shall furnish to each of his employees employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious harm to his employees; and shall comply with occupational safety and health standards issued under the Act.
  - (b) Each employee shall comply with all occupational safety and health standards, rules, regulations and orders issued under the Act that apply to his own actions and conduct on the job.

C. DEDUCTIONS

1. Full wages earned must be paid.
2. Permissible withholdings include those for the employee share of medical or hospital care, pensions on retirement or death, life or accident insurance, or other deductions authorized by law and other deductions approved by the employee. Deductions are not permitted for damages, shortages, missing material, etc. unless authorized by court order.

D. CIVIL RIGHTS - EQUAL OPPORTUNITY EMPLOYMENT

1. The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against because of race, color, national origin, religion, sex, marital status, age or physical or mental handicap.

E. PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS

Unless superseded by federal law, contractors must give preference to the employment of bona fide residents of Montana in the performance of work on public works projects.

F. CONTRACTOR REPORTING REQUIREMENTS

**In conjunction with the previously mentioned labor and civil rights requirements, the prime contractor is required to periodically submit several forms to the TSEP recipient's grant administrator. The prime contractor is fully responsible for providing all reports required from subcontractors.**

1. Each contractor (prime and sub) must submit (through the prime contractor) Certified Payroll Forms (WH-347) for each week from the time the project begins through completion. If the contractor prefers to use a form other than WH-347, it must contain identical information. Weekly payrolls should be numbered sequentially, and be submitted to the TSEP recipient no later than seven days following the end of the pay period. (Exhibit 6-E contains a blank Certified Payroll Form WH-347 and a completed example of WH-347.)
2. A completed Statement of Compliance with Labor Standards and Prevailing Wage Requirements must be submitted with each Certified Payroll Form. Certified payrolls must be submitted on a weekly basis whether or not work was performed. If no work was performed, the contractor should note this on the payroll. The Statement of Compliance appears on the back of form WH-347 or as form WH-348 if WH-347 is not used. (Exhibit 6-E contains a

sample Statement of Compliance (WH-348).)

3. The first week after work on the project begins the TSEP recipient's grant administrator should be supplied with the names of anyone (other than owner or officer) who is authorized to sign payrolls for each contractor (prime and sub).
4. The prime contractor must supply the TSEP recipient's grant administrator with the names of all subcontractors working on the project the first week after work begins, and the names of any new subcontractors immediately after they begin work on the project.
5. Subcontractors

### **Prevailing Wages**

Contractual relationships between contractors and alleged subcontractors (who perform mechanic's work) which are formed for the purpose of evading the application of prevailing wage requirements are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona-fide nature of a self-employed subcontractor (a sole proprietor or working partner) who has no other employees, the following should be checked. At the time the contract was executed:

- a) Did the subcontractor have a current, valid exemption from payment of workers' compensation and unemployment insurance from the Montana Department of Labor and Industry (MDLI)?
- b) Was the subcontractor registered with MDLI?
- c) Did the subcontractor have liability insurance in force or a subcontractor's bond?
- d) Did the subcontractor have a Federal Tax Identification Number issued and evidence of payment of self-employment tax?
- e) Did the subcontractor have a registered trade name, and a telephone listing, printed invoices, business cards, business permits or licenses, or public advertisements under that name?

Use of these criteria in conjunction with a signed contract containing the TSEP labor provisions between a contractor and each such subcontractor should be sufficient to establish that he or she was a bona-fide subcontractor at the time the subcontract was executed. Such a subcontractor will submit

payrolls indicating only that he/she is the owner or partner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security Number (See Column 1 on Form WH-347). Non-bona fide self employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

### **Workers' Compensation and Unemployment Insurance**

Sole proprietors or working members of a partnership are exempt from workers' compensation coverage. Those who are bona fide independent contractors can be exempted from paying workers' compensation or unemployment insurance on themselves. However, they must have first complied with the MDLI independent contractor exemption requirements. If individuals do not meet the MDLI requirements for exemption, they are considered employees rather than subcontractors and must have workers' compensation and unemployment insurance coverage. The burden of proof is on the general contractors to prove the independent contractor status.

### **MONITORING AND SANCTIONS**

- J. **The TSEP recipient's grant administrator is responsible for monitoring the construction project to assure compliance with all applicable labor and civil rights requirements.**
1. On-site inspections must be conducted periodically by the TSEP recipient's to ensure that the required prevailing wages are posted.
  2. Weekly payroll reports of the prime contractor and all subcontractors must be examined by the TSEP recipient's grant administrator to ensure compliance with state prevailing wage requirements.
  3. At least once per month the TSEP recipient's grant administrator must conduct interviews with construction employees of the prime contractor and subcontractors. The interviews should be scheduled early into the first month of construction to assure initial compliance with labor standards, and on projects of a shorter duration, conducted midway towards completion. A representative of each classification of mechanic and laborer, and at least 10 percent of the work force should be interviewed during the term of the project. (Exhibit 6-G contains a sample Record of Employee Interview, and instructions for conducting employee interviews.)

4. Montana law provides that any contractor, subcontractor, or employer who pays an employee less than the required prevailing wage must pay the MDLI a penalty of up to 20% of the delinquent wages and fringe benefits plus court or attorney fees, and audit fees. They must also pay the employee the wages owed plus \$25 a day for each day the employee was underpaid. A contractor or subcontractor who is found by MDLI to have willfully violated the law can be barred from receiving public works contracts or subcontracts for a three-year period.

## **PRECONSTRUCTION CONFERENCE CHECKLIST**

### **PRE-CONFERENCE PLANNING**

- \_\_\_\_\_ 1. Identify, and notify conference participants of the time and place of the preconstruction conference**
- \_\_\_\_\_ 2. Prepare the materials that will be needed for the conference**
- \_\_\_\_\_ 3. Organize the materials into individual packets for each conference participant**

### **PRECONSTRUCTION MODEL AGENDA**

- \_\_\_\_\_ 1. Identify the official representatives of participating organizations, including names, titles, business addresses, and telephone numbers for official roster**
- \_\_\_\_\_ 2. Describe the responsibilities of the engineer, or architect, if applicable**
- \_\_\_\_\_ 3. Describe the responsibilities of the TSEP recipient (local government's grant administrator)**
- \_\_\_\_\_ 4. Describe the responsibilities of the contractor, including documentation of compliance with prevailing wage and equal employment opportunity requirements**
- \_\_\_\_\_ 5. Outline and discuss contract terms**

- \_\_\_\_\_6.      **Outline and discuss schedule for construction completion**
- \_\_\_\_\_7.      **Describe responsibilities of subcontractors**
- \_\_\_\_\_8.      **Describe project inspection procedures (responsibilities of TSEP recipient (local government's grant administrator), and engineer or architect)**
- \_\_\_\_\_9.      **Forms and information the contractor must submit**
- \_\_\_\_\_ Certified Payroll Forms (WH-347) (Exhibit 6-E), or equivalent
  - \_\_\_\_\_ Statement of Compliance with Labor Standards and Prevailing Wage Requirements (WH-348) (Exhibit 6-E)
  - \_\_\_\_\_ Copy of the approved plan or program (if fringe benefits will not be paid in cash).
  - \_\_\_\_\_ Apprenticeship or training program agreement (if any apprentices will be working on the project).
  - \_\_\_\_\_ Names of persons authorized to sign payrolls
  - \_\_\_\_\_ Names of all subcontractors

## CONTRACTOR'S RECEIPT OF REQUIRED PROGRAM MATERIALS

(Local Government) \_\_\_\_\_  
(Project) \_\_\_\_\_

Preconstruction Meeting  
(Date) \_\_\_\_\_

On (date) \_\_\_\_\_, we, the undersigned, attended the preconstruction meeting for the (local government's) \_\_\_\_\_ (project) \_\_\_\_\_. At the meeting, we acknowledge receiving the following information:

1. Preconstruction Conference Planning Guide Supplement
2. Weekly Payroll Report Form and Statement of Compliance Form (Exhibit 6-E)
3. Contractor Payroll Instructions for Completing Weekly Payroll Reports Using Payroll Form WH-347 (Exhibit 6-F)
4. Prevailing Wage Compliance Terminology (Exhibit 6-H)
5. State (or Federal) Wage Determination, Decision # \_\_\_\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date



**EXHIBIT 6-E**

**WEEKLY PAYROLL REPORT FORM (WH - 347)**

**AND**

**STATEMENT OF COMPLIANCE FORM (WH - 348)**

(forms are on the following pages)



PAYROLL

(For Contractor's Optional Use; See Instructions, Form WH-347 Inst.)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.		OMB No.: 1215-0149 Expires: 03/31/2003										
PAYROLL NO.		FOR WEEK ENDING																
(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) EXEMPTIONS OR WITHHOLDINGS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK	
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[illegible]

(1) That I pay or supervise the payment of the persons employed by

(Contractor or Subcontractor) \_\_\_\_\_ on the \_\_\_\_\_

\_\_\_\_\_ : that during the payroll period commencing on the \_\_\_\_\_  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, that all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

(Contractor or Subcontractor) \_\_\_\_\_ from the full \_\_\_\_\_

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 13 (29 CFR Subpart A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967, 76 Stat. 357; 40 U.S.C. 276c), and described below:

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(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

## (b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

### (c) EXCEPTIONS

[illegible]

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR ON SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

# STATEMENT OF COMPLIANCE

Date \_\_\_\_\_

do hereby state:

I, \_\_\_\_\_, \_\_\_\_\_ do hereby state:  
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ on  
(Contractor or subcontractor)

the \_\_\_\_\_ ; that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_  
(Building or work)

20 \_\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, all persons employed on said project have been paid the full  
weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said  
\_\_\_\_\_ from the full weekly wages earned by any person and that no deduction have  
(Contractor or subcontractor)

been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined  
in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat.  
948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete: that the wage  
rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination  
incorporated into the contract: that the classifications set forth therein for each laborer or mechanics conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State  
apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such  
recognized agency exist in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:  
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS  
☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the in the above referenced  
payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs  
for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH  
☐ Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an  
amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe  
benefits as listed in the contract, except as noted in Section 4 (c) below.

## (c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS

--

NAME AND TITLE

SIGNATURE

--

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL  
PROSECUTION SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE

## INSTRUCTIONS FOR PREPARATION OF STATEMENT OF COMPLIANCE

This statement of compliance meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay fringe benefits as predetermined by the Department of Labor, in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of his payroll all monies paid to the employees whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions follow:

### **Contractors who pay all required fringe benefits:**

A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

### **Contractors who pay no fringe benefits:**

A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall not be less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus \$3.25/.40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

### **Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the

contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.



## **EXHIBIT 6-F**

### **Contractor Payroll Instructions for Completing Weekly Payroll Reports Using Payroll Form WH-347**

<http://www.dol.gov/esa/forms/whd/wh347.pdf>

<http://www.dol.gov/esa/forms/whd/wh347instr.htm>

<http://manuals.dot.state.tx.us/docs/colconst/forms/WH-348.doc>

(example and instruction are on the following pages)

# PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

**SAMPLE ONLY**

**SAMPLE ONLY**

NAME OF CONTRACTOR <input checked="" type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.												
ACES CONSTRUCTION COMPANY, INC.		1776 America Street, Anytown, Montana 59604		Happy Valley Manor - Anytown, MT 59604		101-35075-PM-WAH-18												
PAYROLL NO #1 (Show # and FINAL at end)		FOR WEEK ENDING July 4, 1983																
(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS			(9) NET WAGES PAID FOR WEEK		
			S	M	T	W	TH	F	S				FICA	WITH- HOLDING TAX	STATE W/H		VAC FUND	* OTHER
John Doe 521-44-7086 1974 Clark Ave. Downtown, MT 59624	1	Foreman Carpenter **																
Dick Brown 544-43-7806 Box 245 Anytown, MT 59601	2	3 cu. yd. Backhoe Operator																
John Doe 501-44-7086 Anywhere St. Downtown, MT 59624	0	10 cu. yd. Truck Driver																
Bill Thomas 515-38-1005 1050 Clearbridge St. Somewhere, MT 59011	1	Cement Mason																
John Johnson 505-43-5478 515 Broadway Anytown, MT 59601	2	Cement Mason																
Tom Thompson 505-43-5478 Box 1010 Hallelujah, MT 59903	2	Laborer																
Tom Thompson 505-43-5478 Box 1010 Hallelujah, MT 59903		Cement Mason																
Harry Jamison 555-44-3372 Box 333 Friendly, MT 59526		(Owner) Tile Setter																
Joe Smith 527-38-7537 730 - 3rd Street Anytown, MT 59601	0	Apprentice Carpenter 1st Step - 55%																

\*\*ALL DEDUCTIONS UNDER "OTHER" SUCH AS PURCHASES, ADVANCES, BONDS, ETC. MUST BE IDENTIFIED AND SUPPORTED BY A SIGNED STATEMENT FROM THE EMPLOYEE AUTHORIZING SUCH DEDUCTIONS WITH THE TOTAL AMOUNT AND REPAYMENT AMOUNT.

☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH (Bill Thomas)

☐ Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Exceptions must be approved.	Use this space for any special or unusual circumstances which
Send copy of plan.	affects wages or employees.

#### Remarks

Additional space which can be used for explanations.

NON-COVERED JOB CLASSIFICATIONS: Workers performing the following classifications are not subject to the prevailing wage requirements - Project Superintendent, Project Engineer, Supervisory Foreman, Watchman, Waterboy, Messenger, and Clerical workers such as timekeepers, payroll clerks, and bookkeepers.

NAME AND TITLE	SIGNATURE
Samantha Simmons Bookkeeper ***	
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

\*\*\* AN AUTHORIZATION FORM OR LETTER MUST BE SUBMITTED FOR ANYONE SIGNING PAYROLLS OTHER THAN AN OFFICER OF THE COMPANY.

6-F.3

Project Administration Manual  
May 2003

Date \_\_\_\_\_

I, Samantha Sammons, (Name of signatory party) Bookkeeper (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by Ace Construction Company on the Happy Valley Manor (Building of work)

101-35075; that during the payroll period commencing on the 28th day of June, 19 83 and ending the 4th day of July, 19 83, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said Ace Construction Company from the full weekly wages earned by any person and that (Contractor or Subcontractor)

no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

FICA, Federal, and State

Other: Vacation and Insurance

BE SURE TO INCLUDE EXPLANATION AND SIGNED STATEMENT FOR ALL "OTHER" DEDUCTIONS.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract, that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

John Johnson) (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

Montana Department of Commerce  
Treasure State Endowment Program

## Instructions For Completing Payroll Form, WH-347

<http://www.dol.gov/esa/forms/whd/wh347instr.htm>

**General:** The use of the WH-347 payroll form is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

This form meets needs resulting from the amendment of Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay not less than fringe benefits as predetermined by the Department of Labor, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

This payroll provides for the contractor's showing on the face of the payroll all monies to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance on the rear of the payroll that he is paying to other fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

**Contractor or Subcontractor:** Fill in your firm's name and check appropriate box.

**Address:** Fill in your firm's address.

**Column 1 - Name, Address, and Social Security number of Employee:** The employee's full name must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless his address changes. Although not required by Regulations, Parts 3 and 5, space is available in the name and address section so that Social Security numbers may be listed.

**Column 2 - Withholding Exemptions:** This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

**Column 3 - Work Classifications:** List classification descriptive of work actually performed by employees. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown or hours so worked is maintained and shown on submitted payroll by use of separate entries.

**Column 4 - Hours worked:** On all contracts subject to the Contract Work Hours Standard Act enter as overtime hours worked in excess of 8 hours per day and 40 hours a week.

**Column 5 - Total:** Self-explanatory

**Column 6 - Rate of Pay, including Fringe Benefits:** In straight time box, list actual hourly rate paid the employee for straight time worked plus in cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$3.25/.40. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. In overtime box shown overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962. In addition to paying no less than the predetermined rate for the classification which the employee works, the contractor shall pay to approved plans, funds or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits in the wage decision made part of the contract. See "FRINGE BENEFITS" below.

**FRINGE BENEFITS - Contractors who pay all required fringe benefits:** A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of labor shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a contractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he is also paying to approved plans, funds or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in section 4(c).

**Contractors who pay no fringe benefits:** A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

### **Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in section 4(c). Enter in the Exception column the

craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay, and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on Federal or Federally assisted project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

**Column 7 - Gross Amount Earned:** Enter gross amount earned on this project. If part of the employees' weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus \$63.00/\$120.00.

**Column 8 - Deductions:** Five columns are provided for showing deductions made. If more than five deduction should be involved, use first 4 columns; show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR, Part 3. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage, but indicate that deductions are based on his gross wages.

**Column 9 - Net Wages Paid for Week:** Self-explanatory

**Totals** - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

**Statement Required by Regulations, Parts 3 and 5:** While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USC 1001, namely, possible imprisonment of 5 years or \$10,000.00 fine or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Space has been provided between item (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See paragraph entitled "FRINGE BENEFITS" above for instructions concerning filling out paragraph 4 of the statement.

## ADDITIONAL INSTRUCTIONS TO CONTRACTORS FOR PREPARATION OF PAYROLL FORM WH-347

1. Make certain all items in the heading are completed, including payroll number and project number. Also review reverse side of form to make certain proper block is checked and signature is affixed.
2. Include the name, address, and social security number of each employee the first time such employee is listed on a payroll report.
3. For equipment operators and truck drivers, include a brief but clear description of the equipment the employee is operating. (This is to be shown on each payroll report.)
4. Show the hours and wages actually worked on the project separate from the employee's total wages for the week. To illustrate: "John Doe" on this example worked on the project 18 hours and on other projects for the same contractor 22 hours. ( $18 \times 6.45 = \$116.10$  earned this project, \$239.30 gross amount earned all projects.)
5. When fringe benefits are sent to an approved program, they need not be included in the rate of pay. (See Example.) Cement Mason, John Johnson receives \$5.90 per hour, an additional \$0.66 is being sent to approved plan which is indicated by marking box (a) of paragraph (4) on the Statement of compliance. Cement Mason, Bill Thomas receives the required fringe benefits in cash. The total rate of pay shown must be equal to the wage rate for that classification plus fringe benefits.. \$5.90 (wage rate) plus \$0.66 (fringe) = \$6.56 and is indicated by marking box (b) of paragraph (4).
6. When an individual performs work on the project in more than one classification within the same workweek, have that individual sign the payroll report or submit a copy of his time card with the payroll report, if a lower rate of pay per hour is applicable.
7. When a valid subcontractor works with his employees on the job, he will be listed with his employees on each payroll. However, he need only show his name as owner. (See Example: Harry Jamison (Owner).) If the subcontractor has no employees and performs alone on the project, he will submit weekly payrolls showing daily and total hours worked. When two or more working owners/operators (partners, co-owners, corporation officers, etc.) perform work on the project they must show daily and total hours worked. (Always show exact work classification.)

8. Submit an apprenticeship certification with the payroll report on which the apprentice is first reported. Indicate what step of apprenticeship and percentage of the journeyman wage he is receiving. (See Example.)
9. It is the General Contractor's responsibility to submit correct payrolls. The General Contractor should therefore compare the wage rate shown on each Subcontractor's payroll with the required rate shown on the wage determination for this project. If there are underpayments, restitution should be required and the payroll report corrected prior to submitting it to the Contracting Agency.
10. Payroll Form: Contractors are urged to use the Department of Labor (DOL) Form WH-347, Payroll. The text of the Weekly Statement with Respect to the Payment of Wages, which is required by regulations of the Secretary of Labor, appears on the reverse side of this optional payroll form. A contractor may use an appropriate payroll form of his own choice, but he must report all required items of information and he must attach a copy of the "weekly statement", using either DOL Form WH-348, Statement of Compliance, which contains the "weekly statement" and related instructions, or any form containing the "weekly statement" in the identical wording as contained in Forms WH-347 and WH-348.
11. In the event any contractor sees he will be employing a trade for which a wage is not listed on the wage determination, it should be brought immediately to the attention of the Contracting Agency so that a wage rate determination for that trade can be made at the earliest possible date. A HUD Form 4230A should be completed, so that a rate can be established. (See Example.)
12. Submission of Payrolls: Each contractor or subcontractor shall submit to the Contracting Agency a completed payroll for each week during the project. All payrolls are to be sequentially numbered, and final payrolls shall be identified accordingly.
13. Payrolls may be completed in dark lead #2 pencil, in pen or typed, but they must be legible. If typed, the contractor can make a "master" listing each employee address, city, state, zip code and social security number. The contractor then reproduces from the "master" a payroll for each week ensuring that each week of work is numbered sequentially. For those employees who did not work, the contractor draws a line through the entry by their names and writes "no work".

By using a "master" the column headings would already be completed except for the week ending column and the date and days worked and the payroll # space.

- a. Payrolls must be signed in ink. Local officials will not accept payrolls signed in pencil or illegible payrolls that are difficult to read.

- b. Payroll authorization forms must be completed for anyone signing and certifying accuracy of payrolls who is not an owner or officer of the company. Local officials cannot accept payrolls signed by an unauthorized person.
- c. Daily hours, total hours, basic rates, overtime rates and gross amounts earned on a TSEP job must be shown separately from work performed on other jobs. The contractor can "circle" hours and amounts earned on the TSEP job. Indicate work on the TSEP job by stating on the bottom of the first payroll that "circled hours represent hours worked on TSEP job."

The gross and net amounts, in any case, must represent the check amount. In other words, if the contractor is paying by check for work performed on the TSEP job--then it is not necessary to provide information about other work--but the check received by the employee must coincide with certified payrolls submitted to local officials.

- d. Deductions must be identified; the contractor must specify what each deduction is for. The contractor cannot lump-sum deductions under "other". Local officials must ensure deductions are "authorized" such as Insurance, Vacation, Health Benefits etc. For other deductions such as "Union Dues" -- Credit Union -- Monetary advances and purchase of tools and deductions probated by the Courts, the contractor must provide employee authorization statements (a statement from each employee authorizing the deduction to be made for a specific purpose).
- e. Overtime: Overtime is earned at one and one-half times the basic hourly rate for each hour in excess of forty (40) hours in each week, and must be paid accordingly ( $BHR \times 1.5 = O/T \text{ Rate}$ ); Zone hourly rate is added to the basic rate when computing the basic hourly rate, but fringe benefits is not included.
- f. Fringe Benefits: Fringe benefits must be paid for each hour worked. If an employee works forty-four (44) hours, he must be paid the fringe benefits shown in the wage determination for 44 hours, either cash, or to an approved plan or trust.
- g. Computerized Payroll Forms: These are acceptable, but must contain the same information currently required by the Form WH-347 and/or WH-348. A completed WH-348 (Statement of Compliance) can be attached to the Computerized Payroll Form.

## PERMISSIBLE PAYROLL DEDUCTIONS

The following payroll deductions may be made without requesting approval:

- a) Any deductions made in compliance with the requirements of Federal or State law.

Examples:           Federal withholding taxes  
                          State withholding taxes  
                          Federal Social Security taxes

- b) Any deductions of sums previously paid to the employee as a bona fide repayment of wages when prepayment is made without discount or interest.

Example: A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of advanced funds.

- c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of. . .

The contractor  
The subcontractor  
Any affiliated person  
OR  
When collusion or collaboration exists

- d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, or representatives of the employer, or both for the purpose of providing (from principal, or income, or both). . .

Medical or hospital care  
Pensions or annuities on retirement  
Death benefits  
Compensation for injuries, illness, accidents, sickness or disability  
OR  
For insurance for any of the foregoing  
OR  
Unemployment benefits  
Vacation pay  
Savings accounts

EXHIBIT 6-G

TREASURE STATE ENDOWMENT PROGRAM

PREVAILING WAGE EMPLOYEE INTERVIEW FORM

Project Name	Contractor or Subcontractor(Employer)
TSEP Recipient	

1. Name of Employee

2. Home Address and Zip Code

3. Last date you worked on project before today? Number of hours worked on project on that date?

4. Your hourly pay rate? \$

5. Your Job Classification(s)? Yes No  
Apprentice?

6. Your Duties?

7. Tools or Equipment Used?

8. Paid at least time and one-half for all hours worked in excess of 40 in a week? Yes No  
(If overtime premium pay is not required, enter "inapplicable")

9. Ever threatened, intimidated, or coerced into giving up any part of pay?

10. Duties observed by Interviewer Yes No  
Conform to Classification:

11. Remarks (continue on reverse if necessary)

12. Signature of Interviewer Date of Interview

**PAYROLL EXAMINATION**

13. Remarks (continue on reverse if necessary)

14. Signature of Payroll Examiner Date

**INSTRUCTIONS FOR CONDUCTING EMPLOYEE INTERVIEWS**

- A. The foreman or construction supervisor should be notified in advance of the time of the employee prevailing wage interviews as a courtesy.
- B. The person performing interviews should be knowledgeable of prevailing wage procedures.
- C. Number of employees interviewed should be sufficient in number:
  - 1. to adequately test the accuracy of the payroll records (at least 10% of the total work force during the term of the project); and
  - 2. to provide a representative sample of all classifications of employees on the project (at least one employee for each job classification during the term of the project).
- D. Place of Interview could be:
  - 1. on the job site, if it can be conducted properly and privately (this is a one-on-one process);
  - 2. at the employee's home;
  - 3. at the local government agency's office; or
  - 4. by mail.
- E. The interviewer should observe the duties of the workers on the job site before initiating any interviews.
- F. To initiate the interview, the interviewer should:
  - 1. properly identify him/her/self;
  - 2. clearly state the purpose of interview; and
  - 3. advise the worker that the information given is confidential, and that their identity will be disclosed to the employer only with the employee's written permission.
- G. Employee interviews should be recorded in the TSEP Prevailing Wage Employee Interview Form. The interviewer should pay particular attention to:
  - the employer's actual name and not just the name of a first line supervisor;
  - the employee's full name (line 1);
  - the employee's permanent mailing address (line 2);
  - the last date the individual worked on the project and number of hours worked that day (line 3) (The interviewers should make it clear that these questions solely relate to work on this project and not other work.)

- the hourly rate of pay (line 4);
  - a. determine if the worker is being paid at least the minimum compensation required by the proper wage decision including health and welfare and pension;
  - b. be sure the worker is not quoting the "net" hourly rate; and
  - c. if it appears the individual may be underpaid, closely question the worker, ask for any records, and arrange to re-interview the employer.
- the classification (line 5); (enter the worker's statement of his classification, but not a nickname for the trade.)
- the duties and tools used (lines 6 and 7);  
If the worker's statements and the observation made by the interviewer indicate that this individual is performing under the correct job classification, the word "trade" may be entered across both items.
- whether the employee has been paid properly for overtime hours worked (line 8);
- whether the employee has been intimidated into giving up pay or into working for less than the prevailing wage rate (line 9);
- actual duties interviewer observes worker performing during on-site visit (line 10);
- any comments that seem necessary or pertinent in the "Remarks" space on line 11; and
- the exact date the interview took place (line 12).

I. The payroll examiner then will check the information on the TSEP Prevailing Wage Employee Interview Form, against the payroll submitted for the same date as the interview:

1. if no discrepancies appear the examiner can simply write "prevailing wage o-k" in the "Remarks" space on line 13;
2. if discrepancies do appear, this should be noted and appropriate action should be initiated; and
3. when necessary action has been completed, the results are also noted on the same interview form.

J. The interviewer/payroll examiner will work with the contractor to correct any discrepancies between on-site interviews, payrolls, and wage decision. If the discrepancy is other than the result of bookkeeping errors and the payroll examiner is unable to satisfactorily resolve a discrepancy, he/she should contact the TSEP liaison and the Montana Department of Labor and Industry, Labor Standards Bureau.

K. Failure of contractors to comply with labor standards may require payroll adjustments and could result in the imposition of penalties.

## Supplemental Instructions for Conducting Employee Interviews

These supplemental instructions are provided with the sample of a completed TSEP Prevailing Wage Employee Interview Form and pages from an actual general wage decision to aid your understanding of the interview process, and to illustrate how to find the appropriate wage rate based on the sample interview.

The sample employee interview form presents an interview of a worker on a TSEP-assisted water distribution line replacement contract in a hypothetical Montana community, called Sunrise, Montana. In using the form, the interviewer (the grantee's labor standards officer) completed the information on lines #1 through #12 on the day of the interview, which was August 4, 1987. When the weekly payroll report #4, which covered the day of the interview, was received from XYZ Construction Company, the interviewer compared the contractor's payroll information with the information given by the employee, Jack Hammer. The payroll report showed this employee was paid \$12.11/hour base rate and \$3.15/hour fringe benefit as a laborer/pipelayer. The interviewer, after finding the wage rates matched those provided in the construction contract, then showed this as verified in the remarks section (#13) and signed and dated the form (#14).

To determine if this was the appropriate wages paid by the contractor to this employee, the following steps were used to find the prevailing wage rate for a laborer/pipelayer:

1. Determine the applicable job classification;  
(e.g., laborer/pipelayer as given by the employee and by observation of his duties as recorded on page 6-K.5, sample of completed interview form.)
2. Locate the Wage Rate Decision in your construction contract;  
(For purposes of illustration, only the title page and three other applicable pages were used for this review beginning on page 6-K.6. The full decision, MT87-1, consisted of 17 pages from page 165 through page 182.)
3. Locate on this decision the "basic" job classification;  
(e.g., Laborers as listed on page 6-K.7)
4. Determine which "group" of laborers is appropriate;  
(e.g., pipelayer (all types) is listed under Group 2 on page 6-K.8)
5. Determine which "zone" of laborers is appropriate; and  
(see the note on page 6-K.9 regarding Sunrise, MT.)
6. Locate the appropriate wage rate for this classification.  
(e.g., For Group 2/Zone 2, \$12.11 for base rate and \$31.5 for fringe benefit on page 6-K.7)

## EXHIBIT 6-H

### PREVAILING WAGE COMPLIANCE TERMINOLOGY

#### **Apprentice**

- (1) a person employed and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training administration, Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by that Bureau or
- (2) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in a program but who has been certified by the Bureau.

**Basic Rate** - For overtime pay purposes, the basic rate is the greater of:

- (1) the contract minimum rate;
- (2) the minimum prevailing wage rate under Section 18-2-401, MCA, or
- (3) the rate actually being paid.

**Bona fide Resident of Montana** - a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana (from section 18-2-401, MCA).

**Building or Work** - These terms generally include construction activity as distinguished from manufacturing, furnishing of materials or servicing and maintenance work. The terms include, without limitation, buildings, structures and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, scaffolding, drilling, blasting, excavating, clearing and landscaping.

**Construction Services** – Work performed by an individual in construction, heavy construction, highway construction, and remodeling work. The term does not include contracts with commercial suppliers for goods and supplies.

**Contract** - any prime contract which is subject wholly or in part to the prevailing wage provisions of Sections 18-2-401 through 18-2-432, MCA, and any subcontract of any tier

thereunder, let under the prime contract.

**Contractor** - Any person, corporation, partnership or unincorporated association that holds a TSEP-assisted construction contract or subcontract regardless of tier. A state or local government is not regarded as a contractor in situations where construction is performed by its own employees.

**District** - a prevailing wage rate district established as provided in 18-2-411, MCA.

**MDOC** - Montana Department of Commerce.

**Days** - Calendar days.

**Deduction** - any sum of money which the contractor, or someone else in the chain of payment responsibility, withholds from the wages due an employee.

**Discrimination** - A distinction in treatment based on race, color, religion, handicap, marital status, age, sex or national origin.

**Equal Employment Opportunity** - The absence of partiality or distinction in employment treatment, so that the rights of all persons to work and advance on the basis of merit, ability and potential is maintained.

**Fringe Benefits** - fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other federal or state law.

**Heavy and Highway Construction Wage Rates** - wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States Department of Labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way (from Section 18-2-401, MCA).

**Independent Contractor** - For Montana workers' compensation purposes, a contractor who:

- (1) is free from control and direction (both under the terms of the written contract or supported by the facts); and

- (2) has an independently established trade, occupation, business or profession.

Contractors must meet both tests to qualify as an independent contractor.

**Laborer or Mechanic** - includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, or trainees. The term does not apply to workers whose duties are primarily administrative, executive or clerical, rather than manual. Working foremen who devote more than 20 percent of their time during a work week to mechanic or laborer duties, are considered laborers and mechanics for the time spent on such duties.

**Materials Supplier** - A vendor engaged in sales to the public from an established place of business or source of supply.

**MDLI** - Montana Department of Labor and Industry.

**Nonhauling Equipment Owner-Operators** - Owner-operators of nonhauling equipment (in general, equipment other than trucks) are considered to be employees, not subcontractors, and are covered by prevailing wage rate decisions.

**Project Location** – The construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

**Public Works Contract** – A contract for construction services in which the total cost of the contract is in excess of \$25,000.

**Site of Work** – In March 1998, The State's Attorney General issued Opinion No. 12. The opinion held "The prevailing wage requirements in 18-2-403(2)(b) apply to fabrication of materials performed off-site by a contractor for installation or use at the site of construction under a public works contract. The prevailing wage district with respect to such off-site services is the district where the on-site construction occurs."

In general, the "site of the work" is the physical place or places where the construction called for in the contract will remain when work on it has been completed and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

Not included in the "site of the work" are permanent home offices, branch plant establishments, and tool yards of a contractor or subcontractor whose locations and

continuance in operation are determined wholly without regard to a particular project. Fabrication plants of a contractor or subcontractor are not included in the "site of the work," if the materials fabricated at the plant for the project are materials that are normally produced by the contractor or subcontractor as a commercial supplier. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work," even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

**Special Circumstances** – All work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

**Standard Prevailing Wage -**

- (1) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or
- (2) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the U.S. Department of Labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under his part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the U.S. Department of Labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract (from Section 18-2-401, MCA).

**Subcontractor** - An individual or organization under contract with the prime contractor or another subcontractor to perform a portion of the work.

**Supplemental Payroll** - An additional payroll used to correct a deficiency or omission on a certified payroll.

**Suppliers** - Contracts or subcontracts for furnishing supplies and equipment, including installation where the installation requires only an incidental amount of work are not covered by wage rate decisions.

**Trainee** - means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

**Truck Drivers Owner-Operators** - Truck owner-operators are not subject to the state prevailing wage rates prescribed by the MDLI. Such owner-operators shall be listed on payrolls with the notation "owner-operator" after each name. Neither hours worked nor wages paid need be shown.

**TSEP** - Treasure State Endowment Program, administered by the Montana Department of Commerce.

**Wage Determination** - the original prevailing wage decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision.

**Wages** - the basic hourly rate of pay, any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program, and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected.

**Work of a Similar Character** - work on private or commercial projects as well as work on public projects (from Section 18-2-401, MCA).







## CHAPTER 7

### PROPERTY ACQUISITION

#### OVERVIEW

The purpose of this chapter is to provide TSEP recipients with information about the applicable state requirements of acquiring real property. Before beginning the acquisition process, the TSEP recipient should consider the following general principles:

- whenever possible, alternative sites should be considered that would eliminate the need for condemnation or displacement of property owners;
- good faith efforts should be made to negotiate property acquisitions that are mutually agreeable to all parties;
- property owners should be paid at least the appraised fair market value for acquired property and improvements; and
- **whenever possible, condemnation and litigation should be avoided and used only as a last resort. Condemnation of a property could potentially take several months to resolve and could cause expensive delays in the completion of the project.**

#### APPLICABLE STATE AND FEDERAL REQUIREMENTS

##### STATE

Relocation Assistance/Fair Treatment of Condemnees, Title 70, Chapter 31, *Montana Code Annotated* (MCA), is the state statute that allows compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Eminent Domain, Title 70, Chapter 30, *Montana Code Annotated* (MCA), is the state statute that defines statutory policies and procedures for exercising the right of eminent domain for public uses.

##### FEDERAL

Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, more commonly known as the *Uniform Relocation Act Amendments of 1987*, which amends the 1970 Uniform Relocation Act.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which provides uniform procedures for the acquisition of real property for federal or federally assisted projects, and ensures the uniform and equitable treatment of persons and businesses displaced as a result of federal or federally assisted projects.

## **TSEP RECIPIENT RESPONSIBILITIES**

For each acquisition activity, the TSEP recipient must determine whether federal funds will pay for any project costs. If federal funds are involved in the project, TSEP recipients must comply with the federal law, the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, including the 1987 amendments. If the project results in displacement of persons or businesses by the acquisition, the affected persons or entities are entitled to relocation assistance under the Uniform Act regardless of whether the acquisition is voluntary or non-voluntary. Local officials should contact any federal funding agency participating in their project for guidance, if the TSEP project will be subject to the Uniform Act.

When federal funds are not involved in the project, the TSEP recipient can negotiate property acquisitions that are mutually agreeable to all parties (voluntary acquisition) or exercise the power of eminent domain if negotiations do not lead to a mutual agreement (involuntary acquisition).

## **VOLUNTARY ACQUISITIONS**

Once it has been determined that a specific property is needed for the project, you should make good faith efforts to negotiate a mutually agreeable contract for the acquisition of the property. The following procedures provide some guidance in completing a voluntary acquisition:

1. As a general rule, property owners should be paid at least the appraised fair market value for acquired property and improvements. Real property being acquired through voluntary acquisition should be appraised in order to assure that fair market value is paid for the acquisition. An appraisal is not necessary for a voluntary acquisition in the following situations:
  - a) if the landowner agrees to donate the property;
  - b) if the TSEP recipient determines that an appraisal is unnecessary because the determination of valuation is uncomplicated and the fair market value is estimated at \$2,500 or less, based upon a review of available data by

a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the TSEP recipient's project files). However, if requested by the landowner, the TSEP recipient should obtain an appraisal; or

- c) if the property owner agrees to waive the appraisal, and such approval is obtained in writing.

2. If TSEP funds will be used to pay for an acquisition, the following documents must be retained in the TSEP recipient's project file:

- a description of the property and reasons for its acquisition,
- name of the appraiser,
- date of appraisal,
- appraised value of the property,
- copy of the appraisal,
- copy of the contract for sale,
- purchase price of the property,
- settlement costs,
- donation agreement (if applicable),
- recorded deed of property to the TSEP recipient, and
- proof of payment.

## INVOLUNTARY ACQUISITIONS

Section 70-30-101 through 322, MCA describes the procedures set out in state law for counties and municipalities when exercising the power of eminent domain. Eminent domain is the right of a local government to take private property for public use. The following is a general summary of the legal procedures that must be followed under Montana law. In all cases, local officials should consult the full text of the current law before proceeding with the acquisition.

The legal procedures for local governments to acquire property through eminent domain can potentially take several months to complete. The local government is required to first give 30 days written notice before its agents can enter upon the land. Next, a complaint must be filed and a summons issued to begin the eminent domain process. It can potentially take six months or more to commence a trial on the issue of whether a preliminary condemnation order should be issued. Within 30 days of the preliminary condemnation order, the landowner must file a claim to compensate him or her for loss of the property. The local government then has 20 days to accept the claim. If the claim is not accepted, the court will have to determine the appropriate compensation. The process of determining the appropriate compensation, and potentially a court appeal of that decision, could add another three to four months.

The process just described does not provide all of the information required to begin condemnation proceedings, and is intended only to provide you with a brief description of what could occur. As you can see, the process of acquiring land through eminent domain is lengthy and should be avoided, if possible.

It is essential for any TSEP recipient involved in a condemnation proceeding to work closely with their attorney to ensure compliance with relevant state and federal laws. If the TSEP recipient has no other choice than to proceed with condemnation and TSEP funds will be used to pay for the acquisition, the TSEP recipient must also maintain all documentation related to the condemnation proceedings, in addition to the documents discussed above under voluntary acquisition.





## CHAPTER 8

### PUBLIC FACILITIES CONSTRUCTION MANAGEMENT

#### OVERVIEW

The intent of the process described in this chapter is to provide information about the key steps in managing a public facilities project and to inform potential contractors of their responsibilities when accepting a contract funded in whole or in part by TSEP dollars. The procedures described in this chapter are designed to:

- . provide for fair and competitive awards of all contracts and subcontracts for construction of public facilities projects,
- . assure the selection of qualified, experienced contractors at a reasonable cost,
- . ensure that contractors and subcontractors comply with the applicable state requirements such as labor standards and procurement, and
- . ensure that the construction phase of TSEP funded public facility projects is managed effectively.

#### A. APPLICABLE STATE REQUIREMENTS

The following state requirements set forth the principles for selection and awarding of construction contracts. In addition to compliance with the following, TSEP recipients must comply with applicable requirements discussed in all of the preceding chapters of this manual.

Bid Security Sections 18-1-201, et seq., MCA, require that all bids be accompanied by bid security in the amount of ten percent to protect the public authority in the event a successful bidder fails or refuses to enter into a contract.

Contractor Fee and Tax Section 15-50-205, MCA, requires contractors to pay to the Department of Revenue a 1% gross receipts tax and, in addition, requires local governments to withhold 1% of all payments due to contractors and transmit these funds to the Department of Revenue. Person(s) working on contracts valued at less than \$5,000 are exempt from this provision.

Municipal Contracts and Franchises Section 7-5-4302, MCA, requires competitive bidding by cities and towns of construction contracts in excess of \$25,000,

advertising or posting of such contracts before bids are opened, and award of contracts to the lowest responsible bidder.

County Contracts Section 7-5-2301, MCA, requires that a contract for construction in excess of \$50,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

Performance, Labor and Material Bonds Section 18-2-201, MCA, requires contractors to provide a bond that ensures that the contractor will "(a) faithfully perform all of the provisions of such contract; (b) pay all laborers, mechanics, subcontractors, and material men; and (c) pay all persons who shall supply ... provisions, material, or supplies for the carrying on of such work." This provision may be waived if the contract is under \$50,000.

Retainage Section 18-2-316, MCA, limits the maximum retainage applied to construction contracts may not exceed 5% if the contractor is performing by the terms of the contract.

Final Acceptance and Payment Section 18-2-306, MCA, requires that a government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

## **B. KEY STEPS IN MANAGING A PUBLIC FACILITIES PROJECT**

The following steps are provided as a brief guide to managing the construction of public facilities projects. They should be followed along with applicable requirements in preceding chapters. You should always consult the actual text of current Montana law and work closely with your engineer regarding required or recommended construction management procedures for public works projects. In addition, MDOC has available a technical assistance manual called "Building It Right," which provides considerably more detail regarding the bidding, construction and closeout of public facilities projects.

### **Step 1 - Select Engineering Services**

You should follow the instructions in Chapter 3, Procurement Standards, for selecting an engineer to prepare the final project plans, including drawings and material specifications and to supervise project construction. Those instructions include compliance with Section 18-8-201, MCA, which provides for the hiring of architects, engineers, and surveyors in response to requests for proposals. Compensation for these professional services is negotiated after the firm is selected through a competitive proposal process.

## **Step 2 - Prepare Bid Package**

Before inviting bids on any contract, the following steps should be taken to ensure that the bid package contains all the relevant information that bidders will need for their bid:

- the engineer should provide the local officials with a set of plans and

For various reasons, local governments sometimes prefer to hire their own project inspector instead of using the project inspector normally provided by the project engineer. There are many potential issues and inherent problems if a local government hires its own inspector, such as: qualifications of the inspector, coordination with the engineer, supervision, accountability, liability, the engineer's certification of the project, conflict of interest, etc. As a result, TSEP does not recommend that local governments use this type of arrangement, and TSEP funds cannot be used to reimburse the local government for those expenses. The local government can use its own funds or funding from another source if allowed by the funding agency.

specifications for the construction project including an accurate and clear description of the technical requirements of the project. Additionally, the plans and drawings must be stamped by an engineer registered or licensed by the Board of Professional Engineers and Land Surveyors;

- the plans and drawings should also be reviewed and approved by the Department of Environmental Quality or any other appropriate agency;
- acquire any property, easements, or rights-of-way that might be required for construction of the public facility;
- obtain information from local public utilities regarding underground installations. Utility's locations should be identified on a map of the project site that will be included in the bid package. The contractor should be required to verify these locations prior to actual construction and then be held liable for any subsequent damages to underground facilities;
- determine the cost and pricing format. Contracts may be either lump sum or unit priced. "Cost plus" contracts are not allowed; and
- the engineer will prepare the bid package including at least the following items:
  - advertisement for bids;

- information on the method of bidding, process by which the bids will be evaluated, and the method of contract award;
- bid schedule;
- bid bond requirements;
- information on performance and payment bond requirements;
- current copy of state or federal prevailing wages, as applicable;
- general conditions; and
- TSEP supplemental general conditions (See Exhibit 8-A).

The State and Federal funding programs are in the process of developing a uniform supplemental general conditions that would combine each of the funding program's supplemental general conditions into a single document. Once that uniform document is completed, it may be used instead of the TSEP supplemental general conditions. However, the uniform supplemental general conditions will require that the Standard General Conditions of the Construction Contract Funding Agency Edition (EJCDC No. 1910-8-FA) be used.

The Montana Contractors Association publishes model bid specifications entitled "Montana Public Works Standard Specifications" (Fourth Edition, January 1996), and includes most of the items listed above. These standard specifications were prepared in cooperation with the Montana Utility Contractors Association, the Montana Department of Environmental Quality, and the Montana Department of Transportation. The standard specifications are now available on computer diskette, in addition to the traditional books. Both the books and computer diskettes can be ordered from the Montana Contractors Association, 1717 11th Avenue, Helena, Montana, 59601, telephone (406) 442-4162.

All construction contracts must contain provisions for compliance with either federal or state prevailing wage requirements. (See Chapter 6, Labor Requirements.) **All bid specifications and contracts for public works projects must include the prevailing wage rates, including fringe benefits that the contractors and subcontractors must pay for each job classification during construction of the project. Montana law provides that if a public agency or local government fails to include the prevailing wage rate requirements in a bid specification or contract, the contractor is relieved from the obligation to pay the prevailing wage rate and the obligation is then placed on the public contracting agency.**

Bidders must also comply with applicable state and federal civil rights and equal employment opportunity requirements as described in Chapter 5, Civil Rights. The prescribed civil rights clause for bid documents and contracts is also included in the TSEP Supplemental General Conditions found in Exhibit 8-A.

If the TSEP recipient is constructing more than one project at the same time (for example, the City has received a TSEP grant to help fund a water project and the City also intends to pay the total cost of an unrelated sewer project) using the same contractor, the TSEP recipient needs to be aware of some requirements. Either the projects need to be bid separately or a provision in the bid, for the combined projects, must be included to ensure that the contractor files separate claims for the two projects. TSEP requires that the pay estimate and related documentation submitted with the TSEP Request for Funds Form must be separate from the other project so that the claim is clearly distinct for the project funded by TSEP funds.

### **Step 3 - Obtain Bid Document Review and Approval**

To ensure that all of the required bid provisions are included, project engineers must send a copy of the bid package, to the assigned TSEP liaison **no later than 30 days prior to the initial bid advertisement**, for DOC approval.

Once the complete bid package has been assembled, it should be reviewed by the TSEP recipient's attorney for completeness and consistency with state laws and regulations. Montana law (Section 18-2-404, MCA) requires that all public works contracts be approved in writing by the public entity's legal adviser prior to execution.

**Prior to the bid package being advertised, it must be reviewed and approved of all other applicable state or federal agencies with review and approval authority for the type of project planned.** For most TSEP funded projects, this means that the Department of Environmental Quality has reviewed and approved the plans and specifications before the bid is advertised.

### **Step 4 - Advertise Bid Solicitation**

An advertisement of the bid should be drafted based on the information included in the "Advertisement for Bid" portion of the bid document. The advertisement must be in accordance with the requirements stated in the table on the next page.

Jurisdiction	Statute	Amount of Contract	Advertising Requirements	Notes
Municipalities	7-5-4302, MCA	Contracts over \$25,000	Must advertise twice, no less than six days apart.	The second publication must be not less than five days or more than 12 days before the bid opening.
Counties and Districts	7-1-2121, MCA	Contracts over \$50,000	Must advertise twice, no less than six days apart.	

**A copy of the current state wage rate determinations as provided by the Montana Department of Labor and Industry (MDLI) must be included in any solicitation for bids unless Montana's prevailing wage requirements are superseded by the federal Davis-Bacon Act.** Wage rate determinations are issued by the MDLI every year for both "Heavy and Highway" and "Building" wage rates (see Exhibit 6-B for an example of a MDLI wage determination).

For copies of the state's wage rates call (406) 444-5600, or write:

Labor Standards Bureau  
Montana Department of Labor and Industry  
PO Box 6518  
Helena, MT 59604

Or visit their internet site at: <http://rad.dli.state.mt.us/pw/>

Under ARM 24.16.9007, the wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised. For this reason, the grant administrator should contact DOC approximately two weeks before bid advertising to re-verify that the wage determination is still current.

In addition to the minimum legal advertising, DOC strongly recommends that TSEP recipients also advertise at least once in a newspaper with regional distribution in their area of the state. The bid solicitation can also be submitted to plan exchanges and bid clearinghouses such as those administered by the Montana Contractors Association. The more exposure the bid solicitation receives, the more qualified contractors will be aware of it, hopefully resulting in lower and better bid proposals.

**Any amendments to the bid package must be mailed as an addendum to each bidder, and every bidder must be given an appropriate period of time to review and respond.**

### **Step 5 - Log Each Bid**

Upon receipt, each bid should be logged as to time and date of receipt. The bids should remain sealed and safely stored until the bid opening.

### **Step 6 - Conduct Bid Opening**

The bid opening should be conducted in a businesslike manner with each bid being opened and reviewed prior to reading aloud the dollar amounts. The TSEP recipient's attorney should participate in the bid opening. If any irregularities are found, the amounts should not be read or considered and the bid should be returned to the bidder. Should a bidder identify an error in the bids, in any form, the TSEP recipient's attorney should review the state statutes governing bid irregularities before proceeding further. When all matters of bid irregularities are resolved, the low bidder will then be determined.

Examples of irregularities for consideration in the rejection of bids include:

- . bid proposals not submitted on specified forms, or altered in form by a bidder;
- . unsigned bid proposals;
- . bid proposals not accompanied by the specified guarantee (bid bond, etc.);
- . bid proposals by unqualified or improperly licensed entities, contrary to specifications or law;
- . qualifying a bid or bid items in a bid proposal contrary to the specified requirements of bid items or bidding documents;
- . bid proposals which omit items required by the specifications;
- . altering a bid as to specified time of commencement or completion of work; and
- . bid proposals which fail to acknowledge an addendum.

Examples of minor bid irregularities that may be waived include:

- . omission of date when signed, or title of person signing;

- . failure to initial erasures (assuming other information is legible);
- . failure to acknowledge an addendum which does not affect quantity, quality, time or price;
- . submission of a bid in an unsealed envelope;
- . omission of a subcontractor's or supplier's name at bid submission time;
- . unit price bid proposals which include correctable, reconcilable arithmetic errors if the unit price does not change; and
- . lump sum bid proposals which include correctable, reconcilable arithmetic errors if the amount on which the award will be based does not change.

In the event that all bids exceed the amount of funds available for the construction project, the TSEP recipient has two options:

1. use additional local financing resources such as general revenues or bond proceeds; or
2. modify the bid package and repeat the entire bid process as outlined above.

**Under no circumstances can the TSEP recipient negotiate with the low bidder to bring the offer in line with the project budget.** If a TSEP recipient has reason to believe that bids may come in higher than available funds, separate (deductive) bid schedules should be used. Under this approach, the bid proposal would contain several schedules of work items or components to be provided, and any one of them could then be eliminated from the project. This would also allow contractors to either bid on one component or all components of work items, generally providing more competition and greater likelihood of a lower bid amount.

### **Step 7 - Review Low Bid**

Following the bid opening, the low bid should be reviewed to ensure that the bid submission is technically and legally responsive to the solicitation for bids, that the contractors and all subcontractors are qualified and have the capacity to carry out the project as scheduled. If, in the opinion of the project engineer and the TSEP recipient's attorney, the low bid proves to be unsatisfactory for any reason, and the TSEP recipient chooses to use the next lowest bidder, a statement of justification must be sent to the low bidder with a copy retained in the construction contract file.

## **Step 8 - Verify Low Bidder Eligibility**

Prior to awarding any construction contract, the TSEP recipient must provide notice to the TSEP liaison of the name of the prospective contractor firm and its principal owner(s) (see sample letter, Exhibit 6-C). The TSEP liaison will then check the MDLI to determine if those names are listed and provide the TSEP recipient with a notice of the contractor's eligibility or ineligibility. **TSEP funds may be withdrawn from any contract entered into with a listed or otherwise ineligible contractor.** (Contractor eligibility reviews are also discussed in Chapter 6, Labor Requirements.) After debarment review, no further DOC approval of the contractor is required. If federal funds are involved in the TSEP project, the appropriate funding agencies should also be consulted regarding federal debarred contractor requirements.

## **Step 9 - Award Contract**

The TSEP recipient should make the contract award within 30 days of the bid opening unless there are special circumstances, such as if the funds are not yet available or if the project requires some legislative action. Generally, the bid is valid beyond sixty days only with the agreement of the low bidder. If a delay of longer than 60 days is anticipated, TSEP recipients should contact their TSEP liaison for guidance. (A sample "Notice of Award" is included in the "Montana Public Works Standard Specifications" cited earlier.)

The complete contract package should consist of an executed contract document that includes the following attachments:

- . all items included in the bid package;
- . contractor's bid proposal;
- . bond and insurance forms; and
- . signed contractor certifications.

## **Step 10 – Submit a Revised Project Budget and Implementation Schedule**

Once the TSEP recipient has determined who will be awarded the construction contract for the project, a revised project budget must be submitted to the TSEP liaison to reflect the amount of the bid. In the event that the accepted bid(s) received is less than the approved budget for the construction project, DOC reserves the right to share proportionately in any savings with all funding sources. Any savings will be added to the contingency portion of the project budget. **Within 15 days after the construction project has been awarded, a final project budget must be established with DOC.**

If there are any savings upon completion of the project, DOC reserves the right to share

proportionately in those savings with all funding sources. However, the TSEP recipient may request to use the balance of the TSEP funds for an eligible activity, which further enhances the contracted project. Before DOC makes a determination to allow the additional activity, the TSEP recipient must demonstrate that the activity will:

- be consistent with the intent of the original proposed project approved by the Legislature;
- clearly enhance the overall impact of the original project; and
- be able to be completed with the excess funds in a timely manner.

The TSEP recipient must have also demonstrated satisfactory progress toward completion of the original contracted project activities.

The TSEP recipient should send the TSEP liaison a written request to amend the TSEP contract for the additional activities, including full rationale and cost details, for DOC review and approval. If DOC denies this request, the bid amount plus ten percent (10%) contingency will be established as the revised or final construction budget.

**The TSEP recipient must also submit a revised project implementation schedule to the TSEP liaison within 15 days after the construction bid has been awarded.** The TSEP recipient must incorporate into the implementation schedule each major milestone in the construction of the project. The implementation schedule should indicate the time period required to construct the major components of the project such as: treatment plan, lift station, mains, lagoons, etc. The project engineer should be able to provide that information to you.

### **Step 11 - Hold Preconstruction Conference**

The preconstruction conference should be held soon after the contract award. The TSEP recipient and prime contractor should include all subcontractors in the discussions to ensure that the subcontractors are aware that they must also comply with the federal labor standards and civil rights provisions.

The conference represents a key opportunity prior to beginning project construction for the TSEP recipient to give instructions to the contractor. These instructions should include a review of the project and timetable, method for payment, and contractor responsibilities related to labor standards, and other state or local requirements. At this meeting, the contractor should be given a summary of the basic TSEP requirements as listed in Exhibit 6-D of Chapter 6. Chapter 6, Labor Requirements, provides additional information on preconstruction conferences. The TSEP grant administrator should ensure that minutes of the preconstruction conference are placed in the construction contract file. (See Preconstruction Conference Planning Guide, Exhibit 6-D.)

The TSEP liaison will attempt to schedule a meeting with the grant administrator and engineer immediately prior to the preconstruction conference, in order to review TSEP's administrative requirements during the construction phase.

### **Step 12 - Issue Notice to Proceed**

Upon execution of the contract and holding the preconstruction conference, the TSEP recipient may then provide the prime contractor(s) with a "Notice to Proceed." This notice establishes the construction starting date and the estimated date of completion. (A sample "Notice to Proceed" is included in the "Montana Public Works Standards Specification" cited previously.)

A copy of the notice must be sent to your TSEP liaison when issued to the contractor. Additionally, the grant administrator must send the TSEP liaison a "Notice to MDOC of Contract Award and Preconstruction Conference," including the date on which construction will start. (See Exhibit 8-B.)

In the event a contractor is unable to complete a construction project, the TSEP recipient may assess the contractor for the costs the TSEP recipient must incur in order to complete the project. This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts needed to satisfactorily complete the construction. These provisions must be consistent with the corresponding elements of the contract document.

### **Step 13 - Monitor Contractor Activities**

Throughout the construction period, the TSEP recipient is responsible for monitoring the contractor for performance with the project's technical specifications and for compliance with all state and local standards and the terms of the contract.

Performance monitoring should be conducted by the TSEP recipient's engineer and consist of the following elements:

- general supervision, including identifying the need for any construction adjustments and preparation of contract amendments. **Change orders that would affect the TSEP portion of the project budget, or substantially affect the approved TSEP-funded scope of work as described in the TSEP contract with the TSEP recipient, require prior MDOC review and approval before such change orders are signed.** This also involves reviews of major changes to the estimated construction schedule;

quality control to the extent necessary to ensure compliance with technical specifications and conformance with codes and standards;

quality control as needed to ensure that the contractor is providing materials and products consistent with the quantities identified in the design and specifications; and

certification of pay estimates to be used by the TSEP recipient's financial officer to verify estimated costs for partial payments. The project engineer should also obtain evidence that the contractor has made partial payments to any subcontractor or suppliers.

Where the construction project was awarded based on a fixed price bid, the contractor should prepare a cost breakdown showing the amount of funding associated with each element of the construction contract. This information can be used by the engineer for performance monitoring and for determining the accuracy of requests for payments. A copy of this information, which is usually incorporated into the contractor's payment request form, should be included in each of the TSEP recipient's draw requests to facilitate MDOC financial review requirements.

### **Retainage and Gross Receipts Tax**

Partial payments may generally be made up to 95 percent of the total amount of compensation in the contract. The remaining five percent, or retainage amount, is held pending the final inspection and acceptance of work. The actual amounts retained may vary, depending on the amount of the contract, progress of construction, and other specific instructions in the contract. Any interest earned on retained funds is not required to be paid to the contractor.

In addition to the retainage, the TSEP recipient must retain one percent of the total amount of each partial payment due to the contractor and transmit these funds to the Montana Department of Revenue for the Contractor's Gross Receipts Tax. Contracts valued at less than \$5,000 are exempt from this provision. Copies of the "Contract Award Report" and the "Gross Receipts Withholding Report" are contained in Exhibit 8-C, Business Tax Guide To Montana Contractors Gross Receipts Tax.

Compliance monitoring for labor and other requirements should be conducted on an ongoing basis by the TSEP recipient. Refer to Chapter 6, Labor Requirements, for guidance.

## **Step 14 - Conduct Final Inspection**

Upon completion of the construction activities, the engineer must provide the TSEP recipient with a set of "as-built" plans with the request for final payment. Before making the final payment less the retainage, the TSEP recipient must conduct a final inspection of the construction work. Additionally, there should be a determination of whether all state prevailing wage requirements have been satisfied, and that all contract files are complete.

A written acceptance of work can then be issued and final payment made less the retainage. The retainage may be released after 45 days upon submission of a lien release from all contractors and suppliers.

If, after 45 days, there remain claims or liens against the contract, appropriate action must be taken which includes making payments from the retainage and/or the performance and payment bonds as prescribed by state law.

Within 90 days after completion of construction activities, the Montana Department of Environmental Quality requires "as-built" plans to be submitted by your engineer for all water and sewer projects, along with his certification that these activities were completed in accordance with the initially approved plans and specifications.

Within 10 days after a request by the construction contractor for final acceptance, unless otherwise provided by the contract, the local government must decide whether or not to make final acceptance. Final acceptance means that the building has been certified by the project engineer that it has been constructed in accordance with the terms and conditions of the contract documents. Within 30 days after final acceptance, the TSEP recipient must make the final payment of the contract price specified in the contract to the other party to the contract.

## **Step 15 - Maintain Records**

For each major construction (prime) contract the TSEP recipient should maintain a separate contract file. The following documents should be retained in the construction contract file:

- . design and cost estimates;
- . evidence of easements and acquisition;
- . bid documents, including required labor and other provisions;
- . evidence of bid advertising;

- . minutes of bid opening including tabulation of bids;
- . evidence of low bid review;
- . evidence of verifying eligibility of low bidder;
- . copy of Notice of Contract Award;
- . executed contracted documents with attachments;
- . copy of Notice to MDOC of Contract Award and Preconstruction Conference (Exhibit 8-B);
- . minutes of preconstruction conference;
- . copy of Notice to Proceed;
- . monitoring and inspection reports;
- . evidence of the final inspection;
- . notice of acceptance of work;
- . lien releases from all contractors and suppliers; and
- . evidence of disposition of outstanding claims.

The following information should be retained in the labor standards file:

- . contractor's weekly payroll and signed Statement of Compliance;
- . records of construction worker interviews; and
- . evidence of any violations and resolutions of violations.

### **C. PERMITS AND OTHER REQUIREMENTS**

Public facilities projects constructed with TSEP funds may be required to obtain state or federal permits and are subject to various requirements, such as:

1. Building Code Requirements
  - Structures modified or constructed with TSEP funds must meet or exceed requirements contained in current editions of the following:
  - National Electrical Code, as amended;

- Uniform Plumbing Code, as amended;
- Uniform Mechanical Code, as amended; and
- the Uniform Building Code.

Permits must be obtained from the MDOC Building Codes Bureau for all electrical and/or plumbing work undertaken with TSEP funds unless the TSEP recipient has been certified by the Bureau to enforce the codes cited above. In such cases, permits will be obtained locally. In addition, in those cases where the TSEP recipient has not been certified by the Building Codes Bureau, permits must be obtained from the Bureau for general building and mechanical work involving any commercial or public buildings.

## 2. Floodplain Requirements

Because water and sewer treatment facilities are frequently located in proximity to surface waters or low-lying areas, special attention should be paid to requirements related to floodplains and wetlands. The TSEP recipient must determine whether a proposed project is located in or will affect a floodplain or wetlands area. If assistance is needed in determining whether the project is located in or would affect a floodplain, please contact:

Floodplain Management  
Water Operations Bureau  
Water Resources Division  
Montana Department of Natural Resources and Conservation  
1424 9<sup>th</sup> Avenue  
PO Box 201601  
Helena, Montana 59620-1601

Phone Number: 444-6654

## 3. Lakes, Streams and Rivers

The placement and construction of structures or improvements, such as bridges, below the low water mark of navigable water bodies requires a permit from the Montana Department of Natural Resources and Conservation. This requirement applies to any lake or streambed that has a history of commercial use or navigation. The structures covered by the requirement include bridges, roads, pipelines, power lines, telephone lines, diversion structures and riprap. For information regarding compliance with the state permit requirements, contact:

Special Use Management Bureau  
Trust Land Management Division  
Montana Department of Natural Resources and Conservation  
1625 11th Avenue  
PO Box 201601  
Helena, Montana 59620-1601

Phone Number: 444-2074

In addition, U.S. Environmental Protection Agency approval or a U.S. Army Corps of Engineers "404" permit may be required if wetlands will be affected.

A "310" permit from the County Conservation District may be necessary if construction work will affect a streambank.

## SUMMARY

Compliance with the applicable state requirements, such as procurement and labor standards, is the responsibility of the TSEP recipient and can be met by:

1. Selecting engineering services in accordance with state procurement standards appropriate for competitive negotiation (Requests for Proposals) (see Step 1);
2. Preparing design plans and bid specifications and all remaining bid document items which include the required state construction contract provisions and receive all necessary state and federal agency reviews and approvals (see Steps 2 and 3);
3. Providing for the appropriate advertisement of bid solicitation and bid security procedures (see Steps 4 and 5);
4. Conducting the bid opening in a proper manner and giving appropriate attention to bid review procedures (see Steps 6, 7, and 8);
5. Awarding the construction contract to the lowest responsible bidder within the required time (see Step 9);
6. Holding a preconstruction conference to inform the prime contractor and all subcontractors performing contract construction work of their legal obligations (see Step 10);
7. Providing the required notices when initiating construction activities (see Step 11);
8. Monitoring contractor activities throughout the construction period to ensure performance is in accord with the technical specifications and compliance is maintained with all state and local requirements and the terms of the contract (see Step 12); and
9. Conducting the final inspection and filing the required notices and reports with the appropriate agencies (see Step 13).

## **CHAPTER 8**

### **EXHIBITS**

- 8-A TSEP Supplemental General Conditions
- 8-B Notice to MDOC of Contract Award and Preconstruction Conference
- 8-C Business Tax Guide to Montana Contractors Gross Receipts Tax

## **EXHIBIT 8-A**

### **MONTANA DEPARTMENT OF COMMERCE TREASURE STATE ENDOWMENT PROGRAM**

#### **SUPPLEMENTAL GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS**

The following Supplemental General Conditions are hereby made a part of this contract and shall supplement and/or supersede any articles of these specifications in conflict therewith.

Any subsequent and/or addenda issued after these specifications have been prepared shall supplement and/or supersede any articles of these specifications.

1. Montana Contractor Registration Requirement
2. Gross Receipts Withholding Requirements
3. Preconstruction Conference
4. Reports and Information
5. Access to Records
6. Contract Pricing
7. Montana Prevailing Wage Requirements
8. Montana Resident Employment Preference
9. Contractor Eligibility
10. Workers Compensation
11. Project Sign

## 1. MONTANA CONTRACTOR REGISTRATION REQUIREMENT

Title 39, Chapter 9, Parts 1 and 2, MCA provides that no Contractor may submit a bid unless properly registered with the Montana Department of Labor and Industry. (*MDOC also recommends adding the following provision: No bids will be considered that do not carry the bidder's Montana Contractor's Registration Number on the bid and on the envelope containing the bid.*)

Information pertaining to this requirement and/or to registration procedures may be obtained from the Montana Department of Labor and Industry, Construction Contractors Registration Unit, PO Box 8011, Helena, Montana 59604 or, by calling 444-7734.

## 2. GROSS RECEIPTS WITHHOLDING REQUIREMENTS

Pursuant to Section 15-50-206(2)(3), MCA, the Owner\* is required to withhold one percent of all payments due the Contractor and is required to transmit such moneys to the Montana Department of Revenue. The Contractor is also required to withhold one percent from payments to subcontractors. Information pertaining to gross receipts requirements may be obtained from the Montana Department of Revenue, Business Withholding and Miscellaneous Tax Information, PO Box 202701, Helena, MT 59620 or, by calling 444-0269.

## 3. PRECONSTRUCTION CONFERENCE

After the contract(s) have been awarded, but before the start of construction, a conference will be held for the purpose of discussing requirements regarding such matters as project supervision, coordination with local officials, on-site inspections, progress schedules and reports, payment of prevailing wage rates and payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the engineer and owner to discuss any problems anticipated.

## 4. REPORTS AND INFORMATION

The contractor, at such times and in such forms as the owner may require, must furnish the owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

\* The term Owner means who owns the facility. For TSEP projects this means the local government.

## 5. ACCESS TO RECORDS

The Owner, the Montana Department of Labor and Industry, the Montana Legislative Auditor, and the Montana Department of Commerce shall be permitted by the contractor to have full access to, and right to examine any pertinent books, documents, papers and records of the contractor involving transactions related to this contract, during the period of the project and for three (3) years from the date of final payment or until all findings have been resolved to the satisfaction of the State of Montana.

## 6. CONTRACT PRICING

The cost plus a percentage of cost and percentage of construction cost method of contract reimbursement must not be used.

## 7. MONTANA PREVAILING WAGE REQUIREMENTS

(Include applicable Montana Department of Labor and Industry Prevailing Wage rates)

Unless superseded by federal law, all laborers and mechanics employed in the construction of this project assisted by the Montana Treasure State Endowment Program shall be paid prevailing wage rates in accordance with Sections 18-2-401 through 18-2-432, MCA and all administrative rules adopted pursuant thereto. The contractor must pay, as a minimum, the rate of wages including fringe benefits for health and welfare, pension contributions, vacation, training, travel allowance and per diem, applicable to the locality in which the work is being performed, provided in the attached Montana Prevailing Wage Requirements published by the Montana Department of Labor and Industry.

## 8. MONTANA RESIDENT EMPLOYMENT PREFERENCE

Unless superseded by federal law, Section 18-2-403, MCA requires contractors to give preference to the employment of bona fide residents of Montana in the performance of work on public works projects.

## 9. CONTRACTOR ELIGIBILITY

The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, or otherwise ineligible to receive any public works contracts or subcontracts pursuant to Section 18-2-432 (2), MCA.

## 10. WORKERS COMPENSATION

The Contractor certifies that workers' compensation insurance will be maintained as required by the Montana Workers' Compensation Act (39-71-101, MCA). The Contractor further certifies that the Contractor will comply at all times with occupational disease and health and safety laws and regulations to the full extent applicable.

## 11. PROJECT SIGN

The Contractor will build and place a project sign at an appropriate visible location at the project site. The project sign will conform to the attached drawing. *(Note: the TSEP recipient is required to provide the attached drawing specifying the size of the sign and the information to be placed on the sign. See Chapter 9 – Involving the Public for more information about the required project sign.)*

## EXHIBIT 8-B

### NOTICE TO DOC OF CONTRACT AWARD AND PRECONSTRUCTION CONFERENCE

DATE

Montana Department of Commerce  
Community Development Division  
301 South Park Avenue  
PO Box 200523  
Helena, MT 59620-0523

RE: TSEP Project #MT-TSEP-\_\_\_\_\_

This is to inform you that (name of company/I.D. number) at (address), (phone), has been awarded a construction contract (contract #) -- (brief description of work) in the (TSEP recipient), City or Town of \_\_\_\_\_ or \_\_\_\_\_ County. The contract is for (amount). The estimated start of construction is (date). Contract completion is estimated to be approximately (date).

A preconstruction conference will be held concerning this project at (time) on (date) at (address).

Sincerely,

(Signature)  
(typed name)

TSEP Grant Administrator  
or Project Engineer

(\_\_\_\_\_ TSEP Project)  
(\_\_\_\_\_, Montana Zip)



**EXHIBIT 8-C**

**BUSINESS TAX GUIDE TO  
MONTANA PUBLIC CONTRACTORS GROSS RECEIPTS TAX**

**(on following pages)**

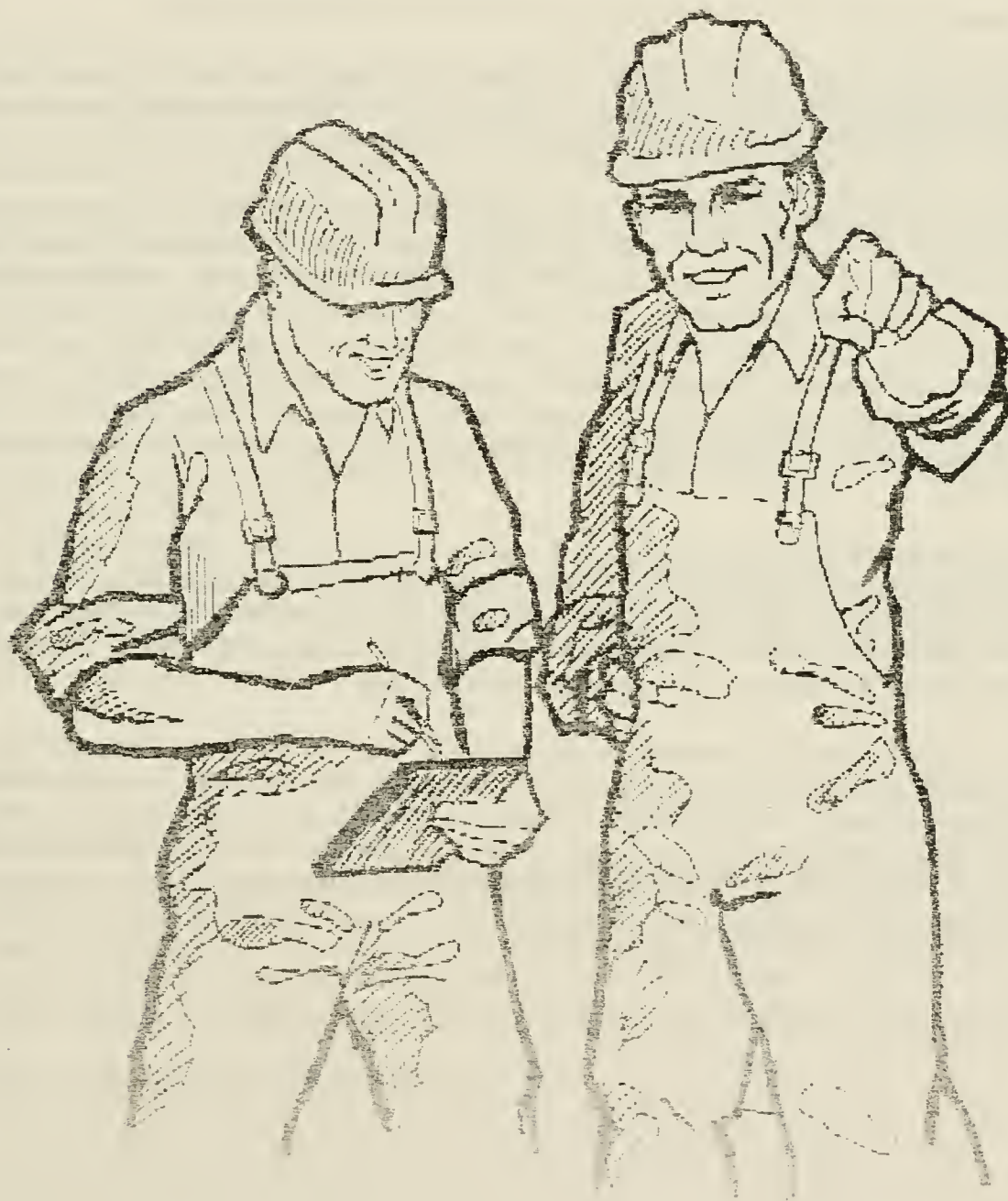




MONTANA  
CGR GUIDE  
Rev. 12-01

# Montana

## Business Tax Guide for Public Contractors Gross Receipts Tax



# Introduction

## Montana Public Contractors Gross Receipts Tax

As a contractor or subcontractor working on a publicly funded project where the owner is a public entity, you are required to pay or have withheld from your earnings 1% of the gross contract price. This tax applies to public contracts equal to or exceeding \$5,000 and any subcontracts attached thereto.

The basic steps for reporting and remitting the Contractor Gross Receipts Tax are:

- Within 10 days after a public contract is awarded, a Contract Award Report (Form PC-1) must be filed with the Department of Revenue. This form may be filed by the awarding agency or by the prime contractor. You'll want to ensure that this form is filed properly and on time.
- Within 30 days of payment to the prime contractor, the 1% tax must be forwarded to the Montana Department of Revenue, Business Tax Section, along with a completed Gross Receipts Withholding Report (Form PC-2). Usually, this tax has been withheld by the awarding agency and the agency will complete the report and remit the payment. If the awarding agency does not withhold and remit the 1% tax, it becomes the responsibility of the prime contractor to do so. Please note that when a federal government agency awards a contract, the federal government does not withhold the 1% tax from payments made to prime contractors. Therefore, the prime contractor becomes responsible for reporting and remitting the 1% tax within 30 days of payment.
- If the project requires a subcontractor, the prime contractor must withhold the 1% tax from payment to the subcontractor and file a completed Gross Receipts Withholding Report (Form PC-2). The Form PC-2 is also used as an allocation report (See Box 10/Form PC-2). It authorizes the Department of Revenue to transfer the allocated portion of the 1% tax from the prime contractor's account to the subcontractor's account.

As a public contractor or subcontractor, you are allowed a refund of the Gross Receipts Tax based on eligible, paid personal property taxes levied against your construction business. This refund is calculated on a dollar-for-dollar basis. You must submit an Application for Refund of Contractors Gross Receipts Tax (Form PC-4) along with copies of your paid personal property tax receipts and vehicle registration certificates. You can also use the 1% tax withheld as a credit when filing your Montana Corporation License Tax or Individual Income Tax Return, depending on how your company is structured.

If you have questions or need assistance, please call us at (406) 444-3500.

**The following pages outline the 1% gross receipts tax withholding process:**

- A completed Contract Award Report (Form PC-1)
- A completed Withholding Report (Form PC-2)
- A completed ledger sheet showing how payments are credited and allocations to subcontractors are debited
- How personal property tax refunds are applied (Form PC-4)
- How income and corporation tax credits are applied

## **Overview**

All contractors and subcontractors working on publicly funded projects, where the owner is a public entity, must have the 1% tax withheld from their payments. The awarding agency must withhold the 1% tax on all payments to the prime contractor. The prime contractor must withhold the 1% tax on all payments made to its subcontractors. Also, a subcontractor must withhold the 1% tax on all payments made to its subcontractors. The federal government will not withhold the tax. Therefore, contractors who are paid in full by the federal government must withhold the 1% tax from the payments they receive and remit the tax within 30 days.

## **The Law**

The Department of Revenue does not take a position on whether or not the 1% tax should be added into the contract bid. The law states "All contractors working on public projects of \$5,000 or more are subject to the 1% tax, period."

If a contractor is paid in full, the contractor is responsible to remit the 1% tax within 30 days of payment. Failure to do so will result in a 10% penalty and interest at 1% per month for monies earned before Dec. 31, 1999. For monies earned after Jan. 1, 2000, the penalty is 1.5% per month with a maximum of 18% and interest at 1% per month.

## **Misconceptions**

Some contractors:

- claim, since the 1% was being withheld from the prime contract, the subcontractors should not include the 1% in their bid.
- have told the prime contractor not to withhold because they did not have 1% in their bid.
- believe, if they did not put the 1% tax in their bid, the awarding agency or prime contractor was responsible to pay the tax for them.

**All of the above are incorrect...See above.**

# **Contract Award Report (Form PC-1)** **Awarding Agencies and Prime Contractors**

This form is prepared by the awarding agency and filed within 10 days of the contract award. A prime contractor must prepare and file this report within 10 days after being notified by the federal agency that the contractor was awarded the contract (the federal government does not file this report).

The following example represents a completed form PC-1 using \$50,000 as the gross contract price.

State of Montana Department of Revenue Contract Award Report			
1	Contract Awarded by (Agency or Prime Contractor)  MT Dept. of Transportation  2701 Prospect Ave.  Helena, MT 59620		
2	XYZ Construction  PO Box 1234  Helena, MT 59604	3	
		4	6/1/02
		5	12/31/02
6	BR-STPU 3333(3)F	7	<b>\$50,000.00</b>
8	Bridge Construction		
9	Ten Mile Creek Helena, MT		
Report Submitted by		Agency or Prime Contractor Department of Transportation	
Award Authorization		Authorized Representative  6/1/02	

When the completed PC-1 is submitted to the department, a ledger sheet is prepared to trace all debit and credit transactions. See example below.

XYZ Construction PO Box 1234 Helena, MT 59604		6/1/02 BR-STPU 3333(3)F Bridge Construction Ten Mile Creek Helena, MT		<b>\$50,000.00</b>	
Transportation, MT Dept. of 2701 Prospect Ave. Helena, MT 59620					
Date		Gross Receipt Tax	Income or Corporation Tax	Personal Property Tax	Balance

## Withholding Report (Form PC-2)

This report is prepared by the awarding agency when payments are made to a contractor. The 1% tax is withheld and remitted to the Montana Department of Revenue within 30 days.

Agencies of the federal government do not withhold the tax. They make payment in full to the contractor. Therefore, the contractor must report and pay the tax to the department within 30 days of receipt of payment.

The following example represents a completed Withholding Report form PC-2. Note the 1% tax of \$500 was paid and the remittance box was marked (X), indicating a payment was sent with the form.

Gross Receipt Withholding Report State of Montana Department of Revenue			
1	MT Dept. of Transportation 2701 Prospect Ave., Helena, MT 59620		
2	XYZ Construction PO Box 1234 Helena, MT 59604	3	
		4	6/1/02
5	Contract Number	BR-STPU 3333(3)F	
6	Month and Year Earned	6/02	
7	Gross due contractor	\$50,000.00	
8	Amt withheld (1% of line 7)	\$500.00	
9	Net amount paid to contractor	\$49,500.00	
10	Check proper box for type of report being filed: <input checked="" type="checkbox"/> Remittance attached for credit to prime <input type="checkbox"/> Subcontractor Allocation Date payment made to contractor 6/29/02		
11	Bridge Construction over Ten Mile Creek; Helena, MT		
Report Submitted By		Agency or Prime Contractor Department of Transportation	
Award Authorization Representative Authorization		6/30/02	

The following ledger shows how the credit is recorded.

Date received 7-1-95, cashier #651234, date credit was earned 6-95 (from line 6, form PC-2). Amount \$500.00 (from line 8, form PC-2).

XYZ Construction PO Box 1234 Helena, MT 59604		6/1/02 BR-STPU 3333(3)F Bridge Construction 10 Mile Creek Helena, MT		\$50,000.00	
Transportation, MT Dept. of 2701 Prospect Ave. Helena, MT 59620					
Date		Gross Receipts Tax	Income or Corporation Tax	Personal Property Tax	Balance
7/1/95	651234 6/95	500 00			500 00

**Contract Award Report (Form PC-1)**  
**Prime Contractors and Subcontractors**

This report is to be completed and sent to the department by a contractor working on eligible public projects who has subcontractors. Form PC-1 must be submitted for each subcontractor. This same filing is required for subcontractors who have subcontractors.

These reports must be filed within 10 days of an awarding date. This document generates the ledger sheets for the contractor and subcontractor.

The following example represents a Contract Award Report (Form PC-1) completed by the prime contractor for a subcontractor.

Contract Award Report State of Montana Department of Revenue			
1	Contract Awarded by (Agency or Prime Contractor)  XYZ Construction  PO Box 1234  Helena, MT 59620		
2	123 Concrete  PO Box 456  Helena, MT 59604	3	
		4	6/8/02
		5	12/31/02
6	BR-STPU 3333(3)F	7	\$25,000.00
8	Concrete Beams for Bridge Construction & Installation		
9	Ten Mile Creek Helena, MT		
REPORT SUBMITTED BY		Agency or Prime Contractor XYZ Construction	
AWARD AUTHORIZATION		Authorized Representative   6/8/02	

When the completed PC-1 is submitted to the department, a ledger sheet is prepared to trace all debit and credit transactions. See example below.

123 Concrete PO Box 456 Helena, MT 59604		6/8/02 BR-STPU 3333(3)F Concrete Beams and Bridge Construction Ten Mile Creek Helena, MT		\$25,000.00	
XYZ Construction PO Box 1234 Helena, MT 59620					
Date		Gross Receipts Tax	Income or Corporation Tax	Personal Property Tax	Balance

Withholding Report (Form PC-2) Used as an Allocation of Credit to a Subcontractor

On public projects where the original contract price is \$5,000 or greater, all contractors subletting a contract are required to withhold 1% of the amount due the subcontractors. No money is sent to the department of Revenue at this stage. The contractor will complete Form PC-2 with the amount withheld from the subcontractor and mark Box 10 as a "Subcontractor Allocation."

The amount withheld will be allocated to the subcontractor and deducted from the original 1% withheld from the prime contractor. Review sample ledgers 1 and 2 at the bottom of this page.

Example Form PC-2

Gross Receipts Withholding Report State of Montana Department of Revenue			
1	XYZ Construction PO Box 1234 Helena, MT 59604		
2	123 Concrete PO Box 456 Helena, MT 59604	3	
		4	6/8/02
5	Contract Number BR-STPU 3333(3)F		
6	Month and Year Earned 6/95		
7	Gross due contractor \$25,000.00		
8	Amount withheld (1% of line 7) \$250.00		
9	Net amount paid to contractor \$24,750.00		
10	Check proper box for type of report being filed:		
	<input type="checkbox"/> Remittance attached for credit to prime <input checked="" type="checkbox"/> Subcontractor Allocation Date payment made to contractor 7/10/02		
11	Concrete Bridge Construction over Ten Mile Creek; Helena, MT		
REPORT SUBMITTED BY		Agency or Prime Contractor XYZ Construction	
AWARD Authorization Representative AUTHORIZATION		7/11/02	

Example (1) shows XYZ Construction's ledger, with a \$250 debit to 123 Concrete.  
Example (2) shows the allocation of \$250 to 123 Concrete, from XYZ Construction.

XYZ Construction PO Box 1234 Helena, MT 59604		BR-STPU 3333(3)F Bridge Construction 10 Mile Creek Helena, MT		6/1/02	\$50,000.00
Transportation, MT Dept of 2701 Prospect Ave. Helena, MT 59620					
Date		Gross Receipt Tax	Income or Corporation Tax	Personal Property Tax	Balance
7/1/02	651234 6/02	500.00			500.00
7/10/02	123 Concrete	(250.00)			250.00

123 Concrete PO Box 456 Helena, MT 59604		BR-STPU 3333(3)F Concrete Beams and Bridge Construction Ten Mile Creek Helena, MT		6/8/02	\$25,000.00
XYZ Construction PO Box 1234 Helena, MT 59604					
Date		Gross Receipts Tax	Income or Corporation Tax	Personal Property Tax	Balance
7/10/02	XYZ Construction 6/02	250.00			250.00

## Application for Refund (Form PC-4) Personal Property Refund Request

A public contractor, from whom the 1% tax was withheld, will be allowed a dollar-for-dollar refund on any personal property and eligible motor vehicle tax incurred and paid between January 1 and December 31 of the year in which the withholding occurred.

The refund applies only to personal property taxes paid on the equipment used in the construction business of the contractor. Copies of paid personal property tax receipts and vehicle registration receipts must be attached to the refund request.

Application for Refund of Contractors Gross Receipts Tax		
Having paid personal property taxes on assets used in this contracting business, the following public contractor applies for a refund of these taxes from his account.		
Mail Refund to:	<u>XYZ CONSTRUCTION</u> <u>PO Box 1234</u> <u>Helena, MT 59604</u>	
Montana Contractor's Registration Number	<u>N/A</u>	
Personal Property Taxes Paid During and for Calendar Year	<u>1995</u>	
1. List below by official contract number or other designation the total amount of contractors gross receipts tax withheld or paid during the calendar year. If more space is needed, attach a separate sheet.		
<b>Contract Number or Other Designation</b>	<b>Amount</b>	
MT Dept. of Transportation		
BR-STPU 3333(3)F	\$500.00	
	Less Suballocations	\$250.00
	Balance	\$250.00
2. List below personal property taxes paid for and during the calendar year covered by this refund claim. Attach copies of <u>paid tax receipts</u> to this claim. If more space is needed, attach a separate sheet.		
<b>Identification of Personal Property</b>	<b>Receipt Number</b>	<b>Amount</b>
89 Ford Truck	D121212	\$100.00
Total Refund Claimed	Applicant	
\$100.00	XYZ Construction	
	By	
	J R. Hired	
	Office Telephone	406-123-1234
	Form PC-4	

The following ledger for XYZ Construction indicates that the refund request was processed and the account was debited \$100, leaving a credit balance of \$150.

XYZ Construction PO Box 1234 Helena, MT 59604		6/1/02 BR-STPU 3333(3)F Bridge Construction Ten Mile Creek Helena, MT		\$50,000.00		
Transportation, MT Dept. of 2701 Prospect Ave Helena, MT 59620						
Date		Gross Receipt Tax	Income or Corporation Tax		Personal Property Tax	Balance
7/1/02	651234 6/95	500.00				500.00
7/10/02	123 Concrete	(250.00)				250.00
1/15/02	1995 Pers. Prop. Tax Refund 95123456				(100.00)	150.00

## Individual Income and Corporation Tax Credit Allowances

The 1% tax withheld from any contractor is allowed as a credit against Montana individual income or corporation tax liability incurred by the contractor. The credit is allowed for the taxable period within which the net income from contracts subject to the gross receipts tax is reported.

The credit is allowed for the month it was earned, not when it is received by the department. In other words, if a contractor's progress payment request was for work performed in October and the 1% tax was withheld and paid in the following month of November, the credit was earned in October not November when it was reported and paid to the department.

**Please note:** This credit is only applicable in the fiscal or calendar year in which it was earned. There is no carry forward or carry back.

The following ledger sheet example uses the credit against an individual income tax liability where the taxpayer is a sole proprietor, sub "S" corporation shareholder or partner. It is important to note that a sole proprietor can use all the available credit. The shareholders and partners are only allowed a percentage according to their share of ownership.

Using the same example, a "C" corporation can use all the credit against its tax liability.

If there is no tax liability, there would be nothing against which to credit the 1% tax.

**Please note:** On an actual ledger, only the individual income tax or "C" corporation tax credit would be shown-- one or the other, not both.

### Sample ledger

XYZ Construction		6/1/95	\$50,000.00	
PO Box 1234		BR-STPU 3333(3)F		
Helena, MT 59604		Bridge Construction		
		Ten Mile Creek		
		Helena, MT		
Transportation, MT Dept. of				
2701 Prospect Ave.				
Helena, MT 59620				

Date		Gross Receipts Tax	Income or Corporation Tax	Personal Property Tax	Balance
7/1/95	651234	500.00			500.00
7/10/95	123 Concrete	(250.00)			250.00
1/15/96	1995 Pers. Prop Tax Refund 95123456			(100.00)	150.00
2/23/96	1995 Inc. or Corp Tax credit 958888		(150.00)		0.00

# Contract Award Report

State of Montana

Department of Revenue

Contract awarding agency or prime contractor must complete this form and mail to the State Department of Revenue within 10 days after contract or bid has been officially awarded.

1	Contract Awarded by (Agency or Prime Contractor)		Mail To: Business Tax Section Compliance, Valuation and Resolution Department of Revenue PO Box 5805 Helena, MT 59604-5805
	Name		
	Address		
	City/Town	Zip Code	
2	Contract Awarded to (Prime or Subcontractor)		3 Montana Contractor's Registration Number
	Name		4 Contract Award Date
	Address		5 Construction Completion Date
	City/Town	Zip Code	
6	Contract Number/Official Designation		7 Contract Amount
8	Description of Work to be performed		
9	Location of work to be performed (be specific)		
Report Submitted by		Agency or Prime Contractor	
Award Authorization		Preparer's Signature	Date
Preparer's Telephone Number			

<b>Gross Receipts Withholding Report</b>  <b>State of Montana</b>  <b>Department of Revenue</b>		Department of Revenue Use Only	
The agency or contractor must, in accordance with Section 15-50-206, Montana Code Annotated, withhold one percent (1%) of incremental payments due the contractor or subcontractor. Amounts withheld from a prime contractor must be forwarded with this report to the Department of Revenue. Amounts withheld from subcontractors must be reported on this form so that proper allocation of credit can be made from prime contractor's account to the subcontractor.			
1	Contract Awarded by (Agency or Prime Contractor)		<b>Mail To:</b> <b>Business Tax Section</b> <b>Compliance, Valuation and Resolution</b> <b>Department of Revenue</b> <b>PO Box 5805</b> <b>Helena, MT 59604-5805</b>
	Name		
	Address		
	City/Town	Zip	
2	Contract Awarded to (Prime or Subcontractor)		3
	Name		Montana Contractor's Registration Number  Contract Award Date
	Address		
	City/Town	Zip	
5	Contract Number/Official Designation		➤
6	Month and year increment payment earned		➤
7	Gross amount due contractor or subcontractor at the time of this report		➤
8	Amount withheld (1% of line 7).      If payment made to prime contractor, remittance must accompany report.		➤
9	Net amount paid contractor or subcontractor at the time of this report.		➤
10	Check proper box for type of report being filed:  <div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> <input type="checkbox"/>  <input type="checkbox"/> </div> <div>             Remittance attached for credit to prime contractor's account.               Subcontractor Allocation. Authorization to transfer credit to subcontractor. Failure of prime contractor to file a distribution report within thirty (30) days of payment will result in a 10% penalty.           </div> </div> <div style="text-align: right; margin-top: 10px;">             Date payment made to subcontractor _____           </div>		
11	Location and brief description of work being performed:  <div style="height: 100px; border: 1px solid black; margin-top: 5px;"></div>		
Report Submitted By		Agency or Prime Contractor	
Award Authorization		Preparer's Signature	Date
Preparer's Telephone Number			

## Application for Refund of the Contractors Gross Receipts Tax

Having paid personal property taxes on assets used in this contracting business, the following public contractor applies for a refund of these taxes from this account.

Mail Refund To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Montana Contractor Registration Number: \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

Personal Property Taxes Paid During and for Calendar Year: \$ \_\_\_\_\_

1. List below by official contract number or other designation the total amount of Contractors Gross Receipts Tax withheld or paid during the calendar year. If more space is needed attach a separate sheet.

Contract Number

Amount

2. List below personal property taxes paid for and during the calendar year covered by this refund claim. **Attach copies of paid tax receipts to this claim.** If more space is needed, attach a separate sheet.

Personal Property

Receipt Number

Amount

Total Refund  
Claimed \$ \_\_\_\_\_

Applicant \_\_\_\_\_

By \_\_\_\_\_

Office Telephone \_\_\_\_\_

## Instructions for Preparation of Refund Requests

- Refund claims for personal property taxes paid during a calendar year may be filed at any time during that year. Credits are allowed in the year the tax liability was incurred and paid. Those property taxes paid in any other year than when they were due will not be allowed.
- Refunds may not exceed (1) the amount of personal property taxes paid or (2) the amount of contractors gross receipts tax credits in the applicant's account for the refund year.
- All personal property taxes listed under item (2) of the application must have copies of paid personal property tax receipts attached.
- Refunds are issued for personal property taxes only. No refund is made in payment of real property tax. If a receipt covers both real and personal property taxes, the applicant must get a statement from the county treasurer showing the amount of tax paid on each type of property. Attach this statement to the refund application.
- New car sales tax, gross vehicle weight charges, junk vehicle fees or similar fees are not personal property taxes. For a complete list of eligible property taxes on vehicle registrations, contact the address below or call (406) 444-3500.
- Refunds will not be issued for personal property taxes paid on automobiles unless the applicant submits a signed statement saying the automobiles are used 100% in the contracting business.
- Any credits of the contractors gross receipts tax not refunded for payment of personal property taxes may be used as a credit against a corporation license tax or individual income tax liability.
- Applications for a refund are to be mailed to:

Business Tax Section  
Compliance, Valuation and Resolution  
Department of Revenue  
PO Box 5805  
Helena, MT 59604-5805



## CHAPTER 9

### Involving the Public



## CHAPTER 9

### INVOLVING THE PUBLIC

#### OVERVIEW

The Legislature places strong emphasis on citizen participation in selecting TSEP projects. One of the statutory ranking criteria for TSEP applications rewards "projects that are high local priorities and have strong community support." As an applicant for TSEP funds, your community should have held at least one public hearing to encourage public involvement in the planning for your project. Many communities went beyond this minimum requirement and held additional community meetings to inform the public about their TSEP funded project and to solicit citizen comments.

It is in the best interest of TSEP recipients and the program itself, that our efforts to involve the public do not stop with the application process. This chapter describes opportunities each recipient will have to involve the public during implementation of a local TSEP project.

#### A. KEEPING THE PUBLIC INFORMED

There is an understandable tendency for the local officials and staff of any community to get involved in the day-to-day details of administering their TSEP project. It is easy to forget that **it is important to keep local citizens up to date on what is going on**, too. Your goal should be to keep the public informed about the TSEP project as it proceeds. On many local public facility projects, there are often plenty of "sidewalk superintendents" who are always eager to convey their impression to friends and neighbors. The best way for local officials and staff to stay ahead of the "rumor mill" is to continually make efforts to keep the public informed about what is going on and why.

Public facility projects are usually quite visible to your constituents. Utility installation and replacement projects can cause hardships on local residents. Because of this, it is of vital importance to keep the general public well informed as to street closures, delays that can be expected, and the general status of the project. A good public relations program to keep the public informed needs to be initiated prior to the commencement of construction and continued throughout the project.

Keeping people informed can help accomplish other goals related to your project, too. In many public facility projects, even with TSEP participation, there will be an increase in user charges or fees for water, sewer or solid waste. Continued publicity regarding the project helps local citizens understand why these costs must go up and makes them feel like part of the process, rather than just being on the receiving end of a higher bill or fee. Publicity also helps inform people regarding the complex issues their local governments are facing in trying to provide adequate public facilities.

Publicity about your TSEP project can also be used to generate enthusiasm about your community and your long-term goals to revitalize your town or a neighborhood. Publicity efforts do not have to be highly sophisticated to be effective. TSEP recipients vary in population; from large cities of 40,000 or more to small towns with as few as 50 residents. Publicity and citizen participation efforts have to be tailored to the situation in each community.

One approach followed by many communities is to have the project engineer or manager provide progress reports to the city or town council at least monthly. Copies of the progress report can also be provided to any local newspaper or radio station.

Another option would be to have the grant administrator or members of the city council make brief presentations to local civic groups or service organizations to bring them up to date.

## **B. DEALING WITH THE MEDIA**

Many communities with excellent public facility projects have never really received the credit they should because local officials or staff assumed that the media would hear about their efforts and publicize their activities. Recognition seldom happens without people taking active steps to inform other people about what is going on. If you can interest the media in your TSEP project you will reach a much larger audience than you can any other way. Reporters and editors are always looking for a good feature idea, especially if you will work with them and it can be developed by them as their own story, rather than just a press release.

It is always desirable if the local newspaper can provide coverage of any major meeting or event regarding the project to help keep citizens up to date on new developments. The grant administrator or the mayor can also contact the local newspaper to periodically brief the editor or reporters on the status of the community's TSEP project.

**If you do a press release or are interviewed about your project, it is helpful if you mention that TSEP funds have helped to finance the project.** This makes other communities aware that TSEP may be an option to help them deal with their problems and also lets people know where their Montana tax dollars are going.

A local radio talk show or call-in program can be an effective way for a grant administrator or local officials to spread the word about their TSEP project. These types of programs are always looking for new material, particularly if it will be of general interest to the public or of a "public service" nature. You can help the interviewer by making up a list of possible questions beforehand.

You should make every reasonable effort to accommodate the media staff. Find out what deadlines and schedules your local newspaper, radio or television stations follow and avoid asking them to give you coverage just before a deadline. For example, weekly newspapers have one hectic day each week when they go to press. You should find out what day it is and try to schedule any special events or meetings around it so you give the newspaper adequate time to incorporate news about your activity in the latest edition.

For any special event or meeting, prepare clear, concise background information for reporters. Reporters may be unfamiliar with the issues of concern to you and often will not have time to do background research before their deadline. Exhibit 9-A is a short description of the Montana Treasure State Endowment Program that may provide useful background information for local media staff preparing a feature on a local project.

You can also check with your local newspaper to see whether they will accept photographs or will want to take their own. If they will accept prints, find out what kind of film or prints they require. Most newspapers prefer 5 x 7 inch or 8 x 10 inch, black and white, glossy prints. Newspapers prefer shots showing some activity or an object that helps tell a story rather than group pictures of smiling faces. Where a group is photographed, try to limit the number of people photographed to no more than three. You should always accurately identify the names and titles of all the people included in the photograph.

Although local officials involved in administering a TSEP project are immersed in an alphabet soup of acronyms, try to avoid using jargon or terms that will not be familiar to the general public. Use straightforward, simple language.

### **C. PRESS RELEASES**

Press releases should be used primarily for special events or new developments, rather than routine events. If they are used continually, they tend to be ignored.

The lead (first) paragraph should single out the answer to at least two of journalism's five "W's": who, what, when, where, and why. The remainder of the "W's" should be answered in the second paragraph. The lead paragraph should not be over four lines.

Try to begin the release with an eye-catching quote or key statement about the event you are trying to publicize. Use present tense and avoid terms such as "today" since you do not know when the article will be released.

Write your release with the most important information in the beginning, in the order of priority, so the story can be cut from the end. Give a little background on the issue, if necessary.

Releases should be kept to one page in length, whenever possible. Keep it short and simple. They should be typed, double-spaced, on one side only.

If you do a press release for the radio station or the newspaper, make sure that it includes the name and telephone number of a person who can be contacted for further information. Newspapers or radio stations rarely use a press release as it is written, so it is a real help to them if they can call someone to ask additional questions or clarify key points. This will also give local officials or a grant administrator an opportunity to elaborate on the release or emphasize important aspects of the story.

The release should always be distributed sufficiently in advance for news people to plan ahead; do not send it at the last minute and expect prominent coverage.

Exhibit 9-B is a sample format for preparing a press release.

#### **D. PROJECT SIGNS**

A long-standing requirement for many federal funding programs involving the construction of public facilities is that the community erect a sign on or near the project site which describes the purpose of the project and the various funding sources. Some federal agencies, even require that bid specifications contain construction details for project signs including dimensions, size and type of lettering, and specific colors of paint.

For many years, MDOC has strongly encouraged grant recipients to erect project signs to publicize the project and the sources of funding. Publicity about the project helps local citizens feel involved in the project. A well-done project sign can help generate enthusiasm about your project and give people the feeling that things are happening in the community or neighborhood. It also lets the public know that something worthwhile is being accomplished with their federal or state tax dollars. **TSEP recipients are required to put up a sign publicizing the project and showing that TSEP funds are helping to fund the project.**

Reasonable costs for preparing project signs is an eligible use of grant funds. Like the other aspects of publicity for a local TSEP project, a project sign does not have to be professionally done to be effective. The Town of Chester, for example, had a high school shop class paint their sign on a 4 X 8 foot sheet of plywood for the "Chester Northside Water System Improvements" TSEP project. The standard elements of a project sign are shown in the example in Exhibit 9-C. If another funding program requires a project sign and has specifications for size or color, that will suffice, as long as the TSEP is credited and its financial participation listed along with the other funding agency or programs. A single sign may be located at a major construction site or signs may be located at multiple sites, depending upon the nature of the project. For a community-wide project, local officials may choose to erect signs at the principal town entrances.

## **E. SPECIAL EVENTS**

Special events, such as a ground breaking ceremony for a new water treatment plant can be used to let people know what is happening and to generate enthusiasm. For example, the Town of Culbertson held an open house, complete with hot dogs and soft drinks, to show off the town's new water treatment plant. Local public works staff also conducted guided tours for science classes from local schools to describe how the new plant operated to provide safe drinking water for the community. The students told their families what they had seen and increased community awareness of the project.

During any special event, the mayor or county commissioners can invite the Governor or state legislators to cut a ribbon or tour the project. In particular, letting our state Senators and Representatives know what Montana communities are accomplishing with TSEP funds is important to them. State legislators rarely ever hear about the good achieved with state funds; instead they get only the complaints when a citizen is dissatisfied. In making the tough decisions they face regarding competing needs in the state budget, they need to know which programs are providing real benefits for their constituents. Letting them know that TSEP funds can make a difference is important to all of Montana's communities.

## **F. PAMPHLETS OR NEWSLETTERS**

Pamphlets can be an excellent way to educate and inform people. Keep the material short and to the point. In a public facilities project, for example, they could be mailed out with monthly water or sewer bills to keep people informed about the progress of the community's TSEP project.

While most local projects are not of a scale that would justify developing a newsletter just for a TSEP project, it may be possible to use other existing newsletters such as those published by local churches or the county extension agent to get the word out on the local TSEP project.

## **G. POSTERS**

Posters have long been a common approach for publicizing local activities, special events, or public meetings. Posters should be neat, attractive, and not so large that they will take up too much space on a bulletin board or a storefront window. Posters should only be displayed for a week or two. If they are posted longer, they tend to be ignored. They are inexpensive and have many options for placement such as town halls, banks, grocery stores, welfare offices, churches, senior centers, libraries, and laundromats - wherever the public might slow enough to read your message. Remember to ask permission, before you put them up.

## H. DEALING WITH COMPLAINTS

Unfortunately, no discussion of how to deal with the public for a TSEP project would be complete without mentioning the TSEP recipient's responsibility for dealing with complaints. Though local officials are doing their best to improve their community through their TSEP project, human nature seems to guarantee that some citizen, at some time, will probably be dissatisfied with some aspect of the project. In a public facility project, a taxpayer may feel that the proposed project is poorly designed or too expensive or that the new water or sewer rate is too high. Some residents may be concerned that construction activity may damage their property (or already has).

Local citizens obviously have the right to offer their views at any point during the development and implementation of a TSEP project. The general public needs to know who to contact with their complaints or questions about construction activity. Community officials and staff are usually the ones who get the calls. When a call is received, the caller should either be given the telephone number of the grant administrator or project engineer's representative, or their name, telephone number, time of call, and the nature of the complaint or question should be written down in order to have the proper person return their call. This information should be given to the engineer's representative who will investigate the issue and, if appropriate, order the contractor to make any necessary repairs to correct a problem. In any event, the engineer should report back to the community with the status of the complaint or question.

**Any comment, suggestion, criticism, or complaint made by a citizen should be taken very seriously and deserves a prompt response.** As a rule of thumb, the more promptly local officials, the grant administrator, or project engineer can investigate the basis for a complaint and try to offer a reasonable solution, the better. It is human nature for the citizen lodging the complaint to feel that they are being ignored if the community does not respond with at least a telephone call immediately to investigate the situation. The longer the time before they are contacted, the greater will be their frustration or anger. The usual pattern, if a citizen does not receive a quick and adequate response, is that the next complaint is lodged with MDOC, the Governor, a state legislator, or the local newspaper. A complaint at this level can create a lasting negative impression regarding the worth or effectiveness of the Treasure State Endowment Program or the soundness of the state's or the local government's administration of the program.

The normal procedure, if a complaint is filed with MDOC, the Governor, or a state legislator, is that the complaint will be referred to local officials for response. MDOC will not dictate the form or manner of the response to local officials. The Department's staff is available to advise the community regarding any state requirement that may be at question. In all cases, the final resolution of the complaint is the authority and responsibility of the TSEP recipient. When the TSEP recipient has reached a decision as to whether or how the complaint is to be resolved, MDOC will communicate the local government's decision to the agency or office that originally referred it to MDOC for action.

**Records of all citizen comments, whether in the form of letters or written notes summarizing telephoned or oral comments, should be placed in the citizen participation file for the project, along with the community's letter of reply or notes indicating how the TSEP recipient responded to the comment. Hopefully, the citizen participation file will be filled with compliments, rather than complaints.**

## **CHAPTER 9**

### **EXHIBITS**

- 9-A Summary of the Treasure State Endowment Program
- 9-B Sample Format for a News Release
- 9-C Sample Project Sign Format

## **EXHIBIT 9-A**

### **SUMMARY OF THE TREASURE STATE ENDOWMENT PROGRAM**

1. Montana voters authorized the Treasure State Endowment Program (TSEP) in June 1992. The state-funded program assists cities, towns, counties, rural water, sewer, and solid waste districts, and tribal governments in financing improvements to drinking water systems, sewage treatment systems, sanitary or storm sewer systems, solid waste disposal and separation systems, and bridges.
2. Funding for TSEP is derived from interest earned on the Treasure State Endowment Fund. The principal in the permanent endowment fund is not spent and will continue to grow and be available for future generations of Montanans.
3. TSEP funding requests must be approved by the Legislature. Applications are accepted by the Montana Department of Commerce (MDOC) in May of each calendar year preceding the biennial legislative session.
4. TSEP applications are ranked on a competitive basis in accordance with state statute. MDOC is required to review TSEP project proposals and prepare a list of recommended projects, giving preference based on seven statutory priorities. The statutory ranking criteria for TSEP are designed to direct the limited funds to communities that demonstrate that they have serious health and safety needs and limited financial capacity to meet these needs. MDOC also recommends the form and amount of financial assistance for each project.
5. Except in cases of extreme financial hardship, each community must provide a dollar for dollar match for the TSEP funds it requests.
6. Since the program was created in 1992, more than 150 construction projects have been funded with TSEP grants, totaling over \$58 million.



## **EXHIBIT 9-B**

### **SAMPLE FORMAT FOR A NEWS RELEASE**

(Type on letterhead of City, Town, or County or the Community Development or Planning Office Administering the TSEP Project)

(Date)

**BRIEF HEADLINE IN CAPITAL LETTERS**  
(headline should draw a reader's attention)

**FOR IMMEDIATE RELEASE**  
(never use a specific date)

If possible, begin your news release with an eye-catching quotation. By beginning your release with an attention getting statement attributed to a specific individual, you will increase your chances of getting the release published. Always have the "Who, What, When, Where, Why, and How?" answered in the first paragraph. Often only the first paragraph will be used by a newspaper so make sure the information is included in order of priority.

The rest of the release is used to provide supplemental, background information regarding the topic of the release. Newspapers prefer that news releases be double-spaced so that they have space to edit the text.

**-END-**

(this will make it clear that this is the end of your release)

**FOR FURTHER INFORMATION CONTACT:** Mayor John Driscoll at 453-6040

**PHOTO ATTACHED**

(if you are sending along a black and white photograph related to the release)



## EXHIBIT 9-C

### SAMPLE PROJECT SIGN FORMATS

The standard elements included in project signs for public facilities projects, where there may be one or two major construction sites or buildings involved, are as shown in the example below:

#### TOWN OF SUNRISE

#### WASTEWATER COLLECTION AND TREATMENT PROJECT

John Driscoll, Mayor

CONTRACTOR: XYZ Construction, Inc., Billings

ENGINEER: Clearwater and Assoc., Great Falls

FUNDING: Montana Department of Commerce  
Treasure State Endowment Program Grant \$500,000

Town of Sunrise Reserves \$100,000

U.S. Department of Agriculture  
Rural Utilities Service Grant and Loan \$1,350,000

"Working Together to Build a Better Montana"







## CHAPTER 10

### PROJECT MONITORING

#### OVERVIEW

Recipients of TSEP financial assistance are responsible for administering their TSEP projects in accordance with all applicable state statutory and regulatory requirements, unless they are superseded by federal requirements. The Department has the responsibility to ensure that TSEP recipients are carrying out their projects in accordance with these requirements.

#### PURPOSE OF MONITORING

Project monitoring is the Department's primary method for determining whether a project is in compliance with the state laws and TSEP requirements. **It is the Department's overall goal to assist and support TSEP recipients in complying with applicable state requirements and in successfully implementing their project activities from start-up through closeout of the project.** During the course of the TSEP project, the Department will monitor each TSEP recipient through written progress reports and periodic on-site visits, so that any problems that might occur can be resolved as soon and as easily as possible.

The other goals of the monitoring process are to determine whether TSEP recipients:

- are complying with TSEP specific requirements and other state laws and regulations;
- are carrying out their TSEP project activities as described in their applications and contracts;
- are carrying out their project activities in a timely manner, in accordance with adopted project implementation schedules;
- are charging costs to the projects which are eligible uses of TSEP funds and consistent with the approved project budget; and
- are conducting the program in a manner that minimizes the opportunity for fraud, waste, and mismanagement.

TSEP recipients are required to maintain complete financial and project files, to comply with TSEP reporting requirements, and to make their records available to authorized agents of state government. Representatives of the Department must be provided reasonable access, during normal business hours, to all books, accounts, records, reports

and files pertaining to TSEP-funded activities. Under Montana law, TSEP recipients must also provide all citizens with reasonable access to records regarding the use of TSEP funds.

## **MONITORING PROCEDURES**

In addition to reviewing information submitted with progress reports and requests for TSEP funds, the TSEP liaison for your project will schedule at least one on-site monitoring visit for each TSEP recipient. MDOC will attempt to monitor projects twice if possible; once, during start-up and usually in conjunction with the pre-construction conference, and the second, during construction activities. Each monitoring visit usually involves a one or two-day visit to the community to review records, to inspect the community's progress in completing the project activities, and to meet with the grant administrator and local officials.

On-site monitoring is a structured review conducted at the location(s) where project activities are being carried out and/or where project records are maintained. TSEP staff use a formal monitoring guide covering the key requirements discussed in this manual as the format for their review of local projects. Exhibit 10-A contains a copy of the TSEP Project Monitoring Checklist. The checklist is designed to parallel the organization of the chapters and the project administration issues discussed in the TSEP Project Administration Manual.

Prior to a monitoring visit, the TSEP liaison will contact the grant administrator concerning the timing and scope of the monitoring visit. Whenever possible, each monitoring visit normally concludes with an exit conference. The exit conference provides an opportunity to meet with local officials and staff to review and discuss any outstanding issues identified during the site visit, both positive and negative. As part of that review, the TSEP liaison will describe his or her tentative conclusions and indicate the level of concern that will be assigned to a particular issue and why. In particular, the TSEP liaison will discuss those issues that he or she intends to address in written monitoring comments. In many cases, by thoroughly discussing a potential problem, TSEP staff is able to determine that there is a reasonable explanation for a particular circumstance or question. Since the overall goal of the TSEP liaison is to assist TSEP recipients in achieving timely and effective grant management, every effort will be made to informally resolve or clarify minor monitoring concerns during the exit conference.

## **MONITORING COMMENTS**

Within 30 days following the monitoring visit, the TSEP liaison will provide written monitoring comments to the grant recipient. Copies of the letter will be sent to both the chief elected official and the grant administrator. The monitoring letter will contain the following general elements:

1. A description of each major area the monitoring visit covered, files reviewed, who conducted the review and the date that it occurred;
2. A brief description of the statutory or regulatory requirement at issue and an explanation of the documentation examined pertinent to the requirement;
3. The conclusion the reviewer has reached; i.e., satisfactory performance, a "concern," a "question of performance", or a "finding"; (see explanation of terms below); and
4. A statement that describes the basis for the conclusion.

Within the scope of a monitoring review there are potentially three levels that may be assigned to a particular issue, if the TSEP recipient's performance is considered less than satisfactory:

### CONCERN

When the TSEP liaison raises an issue that does not involve a statutory or regulatory requirement but may involve recommending a management or program improvement, it is considered a "concern". A modification of an administrative procedure or policy is suggested but is not required. No response by local officials is required.

### QUESTION OF PERFORMANCE

If the monitoring review raises a question regarding whether a violation of a statutory or regulatory requirement has occurred, the TSEP liaison will first informally discuss the review results with local officials to determine if a violation has occurred. If a determination cannot be made during the exit conference, the TSEP staff may conclude that there is still a "question of performance" and request that additional information be provided within a 30 day time period in order for MDOC to determine whether a violation has, in fact, occurred. A final determination regarding the issue under question will be made within 30 days of the grant recipient's response.

### FINDING

When a monitoring review of a TSEP recipient's performance reveals a specific, identifiable violation of a statutory or regulatory requirement about which there is no question, the TSEP liaison will make a "finding". A written response regarding the TSEP recipient's proposed actions to correct the situation is required within 30 days of the date of the TSEP liaison's monitoring letter.

Corrective actions should be designed to:

1. Prevent a continuance of the violation;
2. Mitigate any adverse effects or consequences of the violation to the extent possible under the circumstances; and
3. Prevent a recurrence of the same or similar violation.

There may be a number of acceptable solutions for resolving a violation. The TSEP recipient is allowed to respond to each problem with any reasonable and adequate solution of its choice. The Department will determine the adequacy of a corrective action. At all times, the TSEP staff will offer any necessary technical assistance to TSEP recipients to avoid or resolve any monitoring findings.

## CHAPTER 10

### EXHIBITS

#### 10-A Project Monitoring Checklist



## EXHIBIT 10-A

### TSEP PROJECT MONITORING CHECKLISTS

#### PROJECT SUMMARY INFORMATION

TSEP Recipient:[    ]

Contract #MT-TSEP-[    ]

TSEP Amount: [\$    ]

Type of Project:

☐ Solid Waste Disposal or Separation System

☐ Storm Sewer

☐ Wastewater Treatment/Sanitary Sewer

☐ Bridge

☐ Drinking Water

Local Project Manager & Phone #: [    ]

Date(s) Monitored: [    ] Monitored By:[    ]

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# PART I. IN-OFFICE REVIEW CHECKLISTS

## A. PROJECT START UP

### 1. Project Start Requirements:

Date:	
	a. Legislative authorization
	b. Contract executed
	c. Official signature form completed
	d. Official depository form completed
	e. Project management plan approved
	f. Implementation schedule approved
	g. DOC Notice to Proceed issued
	h. All non-TSEP resources to be involved in the project firmly committed
	i. All other contract terms and conditions fulfilled

### 2. Project Management Plan Contents (See Exhibit 1-B, TSEP Project Administration Manual)

Yes	No	NA	
			a. Is description of proposed Overall Administrative Structure (roles of governing body, TSEP recipient's attorney, and key persons to be involved in administration) adequate? Comment: [ ]
			b. Is description of proposed Project Management (persons responsible for day to day management and compliance with state laws and regulations) adequate? Comment: [ ]
			c. Is description of proposed Financial Management adequate (persons responsible and procedures to be followed for assuring proper expenditure of TSEP and other funds)? Comment: [ ]

## B. PROCUREMENT

### 1. RFP Review Checklist *(In-office review for professional or other services to be compensated in part with TSEP funds)*

TSEP Project Name: [ ]

Service to be Procured:

Architecture [ ]

Engineering [ ]

Other [ ]

**Note: To insert information on additional contracts: Go to end of Section B, Select Table, Insert, 15 rows, after and Enter. Return to this row and block to end of printed material in Section B, choose Copy, return to first empty row and select Paste.**

Yes	No	NA	
			a. Did the RFP include:
			(1) The name of the local government issuing the RFP? Comment: [ ]
			(2) A brief description of the project including location, purpose, time frame and status? Comment: [ ]
			(3) A brief description of the scope of the services to be provided by the consultant? Comment: [ ]
			(4) The amount budgeted for the proposed scope of services: Comment: [ ]
			(5) The method of payment to be used? Comment: [ ]
			(6) The timeframe for performing the work, including any major milestones or deadlines involved? Comment: [ ]
			(7) Did the RFP evaluation criteria include, at a minimum, the criteria required by 18-8-204 MCA (or their equivalent)? (i) the qualifications of professional personnel to be assigned to the project; (ii) capability to meet time and project budget requirements; (iii) location; (iv) present and projected workloads; (v) related experience on similar projects; and (vi) recent and current work for the agency. Comment: [ ]
			(8) The name and telephone number of a local person who can be contacted for further information regarding the RFP? Comment: [ ]
			(9) Directions for submitting a response to the RFP? Comment: [ ]

*Note: If the TSEP recipient has not incorporated these DOC recommendations in its RFP, the reviewer should discuss the particular issues involved with the TSEP project manager before the RFP is advertised.*

(10) Is payment to be on the basis of either a fixed-price or a cost reimbursement type contract?

Comment: [    ]

*Note: Cost plus a percentage of cost and percentage of construction cost are prohibited. Payment must be on the basis of either a fixed-price or a cost-reimbursement type contract.*

### C. CIVIL RIGHTS

Yes    No    NA

Has the Montana Human Rights Commission notified DOC of any complaints of discrimination associated with TSEP-funded activities, for which corrective action is required to overcome the effects?

If yes, describe situation:

Comment: [    ]

**D. AUDIT REVIEW** *This Checklist Is to Be Completed for Each Audit Covering TSEP Funds Expended During the Term of the Project. Note: to insert information on additional audits: Go to end of Section D, Select Table, Insert, 37 rows, after and Enter. Return to row 1. and block to end of printed material in Section D, choose Copy, return to first empty row and select Paste.*

1. Date Audit Received.

2. Date Audit Officially Released.

3. By whom conducted.

4. Fiscal Year TSEP Recipient's Funding Was Awarded.

5. Total funds awarded for project.

FY    \$ Amount

List the state fiscal years in which TSEP funds have been expended and the total amount drawn down by the TSEP recipient for each fiscal year, according to DOC/ SBAS records:

Total: \$

			List the total amount of TSEP funds received by the TSEP recipient, according to the audit reviewed:

**Total: \$**

				List the fiscal years covered by the audit:
Yes	No	NA		

			9. Are there any discrepancies between DOC/SBAS financial records and the TSEP recipient's for amounts of TSEP funds drawn down and received by the TSEP recipient which would necessitate any adjustment of records by either DOC or the TSEP recipient? <b>Comment:</b> [ ]
--	--	--	--

			If so, have such adjustments occurred? <b>Comment:</b> [ ]
--	--	--	---

			Documentation attached? <b>Comment:</b> [ ]
--	--	--	--

			10. Was the audit received by TSEP staff no later than one year after the end of the audited period? <b>Comment:</b> [ ]
--	--	--	---

			11. Were there any findings or concerns expressed in the audit report regarding the expenditures of TSEP funds or any compliance issues identified? <b>Comment:</b> [ ]
--	--	--	--

			12. If "yes", prepare written inquiry to the appropriate local official requesting a written response to the specific TSEP related findings or concerns expressed by the auditor.  Letter included in file? <b>Comment:</b> [ ]
--	--	--	--

			13. Date DOC/LGS received TSEP recipient's written response to findings. <b>Comment:</b> [ ]
--	--	--	---

			14. Copy of TSEP recipient's letter of response or corrective action plan included in file?
--	--	--	---

			15. Prepare reply to TSEP recipient's response to audit findings and concerns. <b>Comment:</b> [ ]
--	--	--	---

			Date reply sent: [    ]
			16. If there were audit findings or instances of noncompliance with applicable laws and regulations, were all corrective actions taken within six months of the receipt of the audit report by TSEP staff? <b>Comment:</b> [    ]
			17. In the case where TSEP funds are expended by a subrecipient organization, is there evidence that the TSEP grant recipient has received and reviewed an audit(s) of relevant financial expenditures of the subrecipient organization for the effected years? <b>Comment:</b> [    ]
			18. Were there any illegal acts or irregularities identified by the auditor? <b>Comment:</b> [    ]
			19. If "yes", have proper local and state officials been informed? <b>Comment:</b> [    ] Is correspondence included in file? <b>Comment:</b> [    ]
			20. If a monetary sanction is required, arrange for the establishment of an account receivable by the DOC Management Services Division.  Account receivable established? <b>Comment:</b> [    ]
			21. Based on the audit report, is there a need for additional monitoring or technical assistance? <b>Comment:</b> [    ]
\$			22. Total amount budgeted for audits of TSEP project.
			23. Does the TSEP budget for audit costs appear reasonable? <b>Comment:</b> [    ]
			24. Have audits been received covering all TSEP funds expended for this project? <b>Comment:</b> [    ]

## E. PROJECT CLOSEOUT

### 1. Contract Information

	a. Date contract was effective.
	b. Original scheduled completion date.
	c. Extended scheduled completion date.

### 2. Financial Status

	a. Date of first drawdown of funds.
--	-------------------------------------

			b. Date of last drawdown prior to final closeout.
\$			c. Total grant amount in contract budget.
\$			d. Total actual expenditures at time of closeout.
Yes	No	NA	
			e. Compare the Status of Funds Report to the last drawdown, SBAS, contract budget and determine whether the budget amounts and actual expenditures are consistent. Are there any discrepancies? (If yes, explain.) Comment: [ ]
			f. Are there any unobligated (unexpended) TSEP funds remaining with the TSEP recipient? If so, amount: \$ [ ] Comment: [ ]
			g. Are there any TSEP funds not authorized for expenditure that need to be returned to DOC? If so, amount: \$[ ] Comment: [ ]
\$			h. Amount of remaining TSEP funds available for reallocation.
<b>3. Audit Status</b>			
FY	\$ Amount	a. List the fiscal years in which TSEP funds have been expended and the total amount expended in each.	
\$		Total	
FY	Date Released	b. List the fiscal years covered by an audit and Auditor.  Audited by: [ ]  Audited by: [ ]  Audited by: [ ]	
Yes	No	NA	
			c. Does the DOC project file contain copies of all audits covering TSEP funds expended by this project? (Obtain any copies needed from DOC Local Government Services Bureau.)

			<b>Comment:</b> [   ]
			d. Are there any unresolved findings or noncompliance with applicable laws and regulations issues remaining from the last audit? If "yes", final closeout approval cannot be given until all previous TSEP audit findings are resolved <b>Comment:</b> [   ].
			e. Have all expended TSEP funds been audited? <b>Comment:</b> [   ]
\$			f. If not, what amount of TSEP funds were expended that were not covered by the audit? <b>Comment:</b> [   ]
			g. Based on the audit information above, determine whether this project requires:  (1) Conditional Closeout <b>Comment:</b> [   ]  or (2) Final Closeout <b>Comment:</b> [   ]
<i>Note: Reference most recent audit report and summarize financial status information in conditional closeout letter; particularly any funds to be recovered or reallocated.</i>			
<b>4. Monitoring</b>			
<b>Yes</b>	<b>No</b>	<b>NA</b>	
			a. Has the project been monitored? <b>Comment:</b> [   ]
			b. Have all monitoring issues been satisfactorily resolved? If not, resolve issues before proceeding. <b>Comment:</b> [   ]
<i>Note: Reference monitoring status in the closeout letter.</i>			
<b>5. Project Completion Report</b>			
			a. Date project completion report due. (The report is due within 90 days of completion of project activities based on project progress reports and contract completion date. If the report is not received by this date, the TSEP Administrative Officer must follow up and request the report from the TSEP recipient.)
			b. Date project completion report submitted.
<b>Yes</b>	<b>No</b>	<b>NA</b>	
			c. Follow the directions in Exhibit 11-A of Chapter 11, Project Closeout, for the completion of the Project Completion Report and complete the following

			<p>outline checklist to determine whether the report submitted is accurate and complete.</p> <p>Status of funds report accurate and appropriate certifications completed (Exhibit 11-C)?  <b>Comment:</b> [    ]</p> <p>Exhibit 11-B completed (proposed and actual accomplishments)?  <b>Comment:</b> [    ]</p>
			<p>d. Final audit requirement determined?  <b>Comment:</b> [    ]</p>
			<p>e. Additional information attached:</p> <p>(1) For economic development projects, documentation of actual accomplishments in comparison to projected hiring goals?  <b>Comment:</b> [    ]</p> <p>(2) Open items requiring action including labor standards compliance issues, unpaid costs, or third party claims?  <b>Comment:</b> [    ]</p> <p>(3) Project engineer's final inspection report or letter?  <b>Comment:</b> [    ]</p> <p>(4) Citizen's comments/complaints?  <b>Comment:</b> [    ]</p> <p>(5) Comments or suggestions requiring response?  <b>Comment:</b> [    ]</p>
			<p>f. Project Completion Report complete? If the report is not complete, send a letter to the TSEP recipient contact listing the deficiencies and actions required to complete the report.</p> <p>Date letter sent: [    ]  Date response received:[    ]  Was response adequate? [    ]</p> <p><b>Comment:</b> [    ]</p>
			<p>g. Did the project substantially achieve the accomplishments proposed in the TSEP application and/or the contract?  <b>Comment:</b> [    ]</p>
			<p>h. Based on the review of the file, monitoring report(s), audit report(s), and the Project Completion Report, did the TSEP recipient substantially comply with the laws and regulations associated with the TSEP program? If not, comment</p>

			on what actions will be taken, if any. <b>Comment:</b> [   ]
			i. Project Completion Report approved? <b>Comment:</b> [   ]
<i>Note: Reference Project Completion Report in closeout letter.</i>			
<b>6. Closeout Letter</b>			
<i>Note: The closeout letter(s) can be organized consistent with this checklist and reference the key items of importance identified during the preparation of the checklist.</i>			
<b>Yes</b>	<b>No</b>	<b>NA</b>	
			a. Was the grant recipient informed in the closeout letter of the requirement that all TSEP-related records must be retained for three years after final project closeout? <b>Comment:</b> [   ]
			b. Date(s) letter(s) giving closeout approval sent:  Conditional. [   ]  Final. [   ]
			c. Has the TSEP closeout tracking sheet been updated for this project? <b>Comment:</b> [   ]
			d. If SBAS reports are no longer needed for this project, will DOC/Management Services Division be notified that this project has been closed out? <b>Comment:</b> [   ]

TSEP Recipient: [ ]

Date(s) Monitored: [ ] Monitored By: [ ]

Persons Interviewed: [ ]

## PART II ON-SITE MONITORING CHECKLISTS

### A. PROJECT MANAGEMENT

#### 1. Documentation

Yes	No	NA	
			a. Do the TSEP recipient's files contain a copy of the original TSEP application and all relevant supporting documents? (Map of project area, documentation of local matching funds, etc.) Comment [ ]

#### 2. Eligible Activities

			a. Are project activities being carried out in the same manner as proposed in the original TSEP application or as subsequently approved by DOC? (If not, explain how they are different and whether this affects their eligibility.) Comment [ ]
			b. Are the project activities being carried out in the same geographic area as proposed in the original TSEP application or as subsequently approved by DOC? (If not, explain circumstances.) Comment [ ]
			c. Were all changes in budget expenditures and project activities approved by DOC in advance? Comment [ ]

#### 3. Management

			a. Does the TSEP recipient's record keeping system contain files for the topics suggested by DOC? Comment [ ]  Does the record keeping system appear adequate? Comment [ ]
			b. Do the TSEP recipient's files contain a copy of the TSEP contract and all subsequent amendments? Comment [ ]

			<p>c. Does the TSEP recipient have a copy of the approved project management plan and project implementation schedule on file and is it current and up-to-date?  <b>Comment [    ]</b></p>
			<p>d. Has the TSEP recipient assigned responsibility for the administration of the program to:</p> <p>An employee?  Name and Title: [    ]</p> <p>A separate agency or consultant?  Name: [    ]</p> <p><b>Comment [    ]</b></p>
			<p>e. Does the project manager have a copy of the applicable edition of the Montana <u>TSEP Project Administration Manual</u>?  <b>Comment [    ]</b></p>
			<p>f. Is there a written agreement with any subrecipient of TSEP funds and/or a memorandum of agreement (or interlocal agreement) with any entity with responsibility for project activities?  <b>Comment [    ]</b></p>
			<p>(1) Was the agreement or memorandum approved in advance by DOC?  <b>Comment [    ]</b></p>
			<p>(2) Is the subrecipient's or entity's performance in compliance with the agreement or memorandum?  <b>Comment [    ]</b></p>
			<p>g. Has the project manager established a tracking system to monitor the completion of project activities against the implementation schedule and budget?</p> <p>If so, is the system being used effectively?</p> <p><b>Comment [    ]</b></p>
			<p>h. Based upon the on-site monitoring, does the level of project implementation appear consistent with project progress reports?  <b>Comment [    ]</b></p>
			<p>i. Based upon the on-site monitoring, does it appear that the project will be completed in conformance with the implementation schedule in the TSEP contract? (If not, please explain how situation will be resolved.)  <b>Comment [    ]</b></p>

- |  |  |  |  |
|--|--|--|--|
|  |  |  | j. Review TSEP recipient's Citizen Participation File for any public comment, inquiries, or complaints regarding the project. Were any problems identified or complaints received? |
|--|--|--|--|

If "yes", did they receive responses within a reasonable time period (approximately 15 calendar days)?

Were the problems or complaints resolved promptly and satisfactorily?

Comment [   ]

## B. ENVIRONMENT

- |  |  |  |   |
|--|--|--|---|
|  |  |  | 1. Have any environmentally related complaints been received as a result of project activities? |
|--|--|--|---|

Comment [   ]

- |  |  |  |   |
|--|--|--|---|
|  |  |  | 2. Does on-site monitoring of the project area reveal the existence of any environmental concerns that may require mitigating measures during project implementation? |
|--|--|--|---|

Comment [   ]

- |  |  |  |  |
|--|--|--|--|
|  |  |  | 3. Does on-site monitoring of the project indicate any noncompliance with state environmental laws or regulations? |
|--|--|--|--|

Comment [   ]

## C. PROCUREMENT

### 1. Procurement Review Checklists

*(Note: These checklists are intended for on-site review of TSEP recipients' records regarding procurement of any goods or services to be funded in whole or in part with TSEP funds. Copy checklist and complete for each procurement and contract reviewed, including TSEP-funded professional services contracts such as grant management, architectural, or engineering services. Checklist may be used either for in-office or on-site reviews of procurement procedures. (For construction contracts, see part H, Public Facility Construction Management.)*

Name of Firm/Contractor: [   ]

Purpose of Contract: [   ]

Date of Contract: [   ]

Amount: [   ]

Procurement Type: [   ]

**Note: To insert information on additional contracts: Go to end of Section C, Select Table, Insert, 30 rows, After and Enter. Return to this row and block to end of printed material in Section C. Copy, return to first empty row and select Paste. This must be done for each**

**additional contract.****a. Small Purchase**

(1) Was the small purchase procedure appropriate for the goods or service being procured?

Comment [   ]

(2) Were price quotes obtained from more than one qualified source and do they appear reasonable?

Comment [   ]

**b. Competitive Proposals (Selection by RFP)**

(1) Is a competitive proposal procedure appropriate for the goods or service being procured?

Comment [   ]

(2) Were proposals requested from an adequate number of qualified sources (at least two)?

Comment [   ]

(3) Did the TSEP recipient adequately publicize the RFP and honor reasonable requests to submit responses to the RFP?

Comment [   ]

(4) Were all the responses evaluated according to the written criteria established in advance?

Comment [   ]

(5) Did the grant recipient have a method for conducting technical valuations of the proposals received and for selecting the awardee?

Comment [   ]

(6) Did the grant recipient check references for the awardee?

Comment [   ]

**c. Noncompetitive Negotiation (Sole Source)**

(1) After solicitation from a number of sources, was competition determined to be adequate?

Comment [   ]

(2) Were the items or services required available only from one source?

Comment [   ]

(3) Did a public emergency exist such that the urgency would not permit a delay to use one of the other methods of procurement?

			Comment [   ]
			(4) Did TSEP staff authorize sole source procurement? Comment [   ]
<b>d. General Questions for any type of Procurement</b>			
			(1) Did the TSEP recipient's procurement files contain adequate written documentation of the procurement and the procedures followed for the sampled procurement transaction? Comment [   ]
			(2) Did the solicitation incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured? Comment [   ]
			(3) Was the procurement transaction conducted in a manner that provided maximum open and free competition? (The procedures and description of technical requirements did not unduly restrict or eliminate competition.) Comment [   ]
			(4) Were the methods used to advertise or solicit competition appropriate and in compliance with Montana law? Comment [   ]
			(5) Did the TSEP recipient submit the contract for DOC review, prior to entering into the contract? Comment [   ]
			(6) Does the contract contain the applicable TSEP clauses required by DOC? (See checklist in Exhibit 3-H in TSEP Project Administration Manual.) Comment [   ]
<i>Note: See "Sample Format for a Professional Services Contract", Exhibit 3-F in TSEP Project Administration Manual, for text of the required clauses for professional services agreements.)</i>			
			(7) Was the contract reviewed previously by DOC? If not, complete the checklist shown in Exhibit 3-H, TSEP Project Administration Manual. The clauses noted with an asterisk are required by DOC.
			(8) Were all required contract clauses or their equivalent included? Comment [   ]
			(9) Which method of compensation was used:

			<p>Firm fixed-price [   ]      Cost-reimbursable [   ]</p> <p><i>Note: Cost plus a percentage of cost and percentage of construction cost are prohibited. Payment must be on the basis of either a fixed-price or a cost-reimbursement type contract.</i></p>
			<p>(10) Have any apparent conflicts of interest occurred in any procurement assisted with TSEP funds or does a potential exist for violation of Sections 2-2-201 or 7-5-4109, MCA?</p> <p><b>Comment [   ]</b></p>
			<p>(11) Has the TSEP recipient utilized the conflict of interest waiver provisions set out in Sections 2-2-201 or 7-5-4109, MCA for any procurement assisted with TSEP funds? If yes, describe the situation.</p> <p><b>Comment [   ]</b></p>
			<p>(12) Has the TSEP recipient established procedures to assure ongoing review of consultant or contractor performance and contract expenditures during the term of all TSEP-funded contracts?</p> <p><b>Comment [   ]</b></p>

## **D. FINANCIAL MANAGEMENT**

### **1. General Issues**

			<p>a. Has the TSEP recipient received assistance from the DOC Local Government Services (LGS) Bureau in establishing a financial management and recordkeeping system to account for all TSEP money?</p> <p>Date of visit(s) [   ]</p> <p><b>Comment [   ]</b></p>
			<p>b. Did the LGS Bureau identify any concerns regarding the TSEP recipient's financial management system? If yes, describe.</p> <p><b>Comment [   ]</b></p> <p>Have these concerns been satisfactorily addressed by the TSEP recipient?</p> <p><b>Comment [   ]</b></p>
			<p>c. Has any entity-wide audit or DOC monitoring been conducted to date during the term of the TSEP project?</p>

			<p>If yes, date of monitoring or date of audit: [   ]</p> <p>Name of firm or agency which conducted the audit: [   ]</p> <p><b>Comment</b> [   ]</p>
			<p>d. If so, are any findings in that audit or DOC monitoring pertinent to the financial management of TSEP funds?</p> <p><b>Comment</b> [   ]</p>
			<p>e. If yes, has the TSEP recipient satisfactorily resolved all findings noted in DOC monitoring letters or any previous audits conducted during the term of the project?</p> <p><b>Comment</b> [   ]</p>
			<p>f. Are the TSEP funds within the direct control of the city, town, or county, and included in their financial statements?</p> <p><b>Comment</b> [   ]</p>
			<p>g. What financial system does the TSEP recipient use:</p> <p>BARS [   ]      TAS [   ]      Other [   ] (If Other, describe)</p> <p><b>Comment</b> [   ]</p>
			<p>h. Has the TSEP recipient adopted a budget for expenditure of the TSEP funds by resolution and in accordance with the TSEP contract?</p> <p><b>Comment</b> [   ]</p>
			<p>i. Are the budget line items recorded by the TSEP recipient consistent with the budget line items in the TSEP contract?</p> <p><b>Comment</b> [   ]</p>
			<p>j. Has the TSEP recipient established a separate special revenue fund for TSEP funds (unless the TSEP funds were a contribution to the enterprise fund)?</p> <p><b>Comment</b> [   ]</p>
			<p>k. Are the TSEP funds receipted for in the same manner as other revenue?</p> <p><b>Comment</b> [   ]</p>
			<p>l. Are TSEP funds deposited into:</p> <p>      (1) the TSEP recipient's central accounting system [   ]</p> <p>      or</p>

			(2) a separate account for TSEP funds [ ]
			Comment [ ]
			m. Are TSEP expenditures processed in the same manner as other non-TSEP recipient expenditures? Comment [ ]
			n. Which individuals validate/authorize claims for payment (such as Department Head)? [ ]
			o. Does someone compare proposed expenditures against budgeted line items and TSEP-financed contracts in order to prevent overspending on the authorized budget? Comment [ ]
			p. Which individuals prepare warrants? [ ] Comment [ ]
			q. Does there appear to be sufficient separation of duties to ensure adequate internal control? Comment [ ]
			r. Are the public officials and employees involved in managing TSEP funds bonded as required by Montana law (2-9-701 and 2-9-801, MCA)? Comment [ ]
<b>2. Expenditure Review</b>			
\$	a. Total amount of funds drawn to date. through Draw #[ ] Total amount of funds expended (per TSEP recipient's records) Balance Amount of cash on hand. Comment [ ]		
\$			
\$			
\$			
			b. Do the DOC/SBAS financial records and the TSEP recipient's records for the amount of TSEP funds drawn down and received agree? If "no", which records need to be corrected? Comment [ ] <i>Note: Using Project Expenditure Sampling Form following, sample a reasonable number of TSEP-funded expenditures from administration and activity budget categories. For administration, in particular, review payroll timesheets, telephone bills, and travel expenses to assure reasonable relationship to TSEP activities.</i>

# PROJECT EXPENDITURE SAMPLING FORM

## ADMINISTRATION

Claim No.	Date	Vendor/Source No.	Amount	Warrant No.	Approved By	Comments

## ACTIVITY


			c. Were any ineligible expenditures charged against the TSEP budget for the period prior to the date of the Notice to Proceed (See part A, Project Start Up, for date)? <b>Comment [    ]</b>
			d. Were any ineligible expenditures charged against the grant during the period following DOC's Notice to Proceed? <b>Comment [    ]</b>
			e. Does a review of the following TSEP-funded project expenditures verify that they are necessary and reasonable for administration of the project?
			(1) Administrative service contracts (e.g., legal, accounting, audit, consulting); <b>Comment [    ]</b>
			(2) Salaries and related costs; <b>Comment [    ]</b>
			(3) Travel and training expenditures; <b>Comment [    ]</b>
			(4) Communications (e.g. telephone, postage); <b>Comment [    ]</b>
			(5) Other administrative costs (supplies, printing, equipment)? <b>Comment [    ]</b>
			f. Were all sampled claims reviewed and approved by authorized individuals (Department Head, Council, etc.)? <b>Comment [    ]</b>
			g. Were all sampled expenditures supported by adequate source documentation (invoices, contracts, purchase orders, etc.)? <b>Comment [    ]</b>
			h. Were all sampled TSEP-funded expenditures in accordance with the TSEP budget line items? <b>Comment [    ]</b>
			i. Were all the sampled TSEP-funded expenditures eligible and appropriate uses of TSEP funds? <b>Comment [    ]</b>
			j. Were any TSEP-funded administration expenditures for work

			performed by city or county employees supported by adequate payroll records (timesheets)? <b>Comment [    ]</b>
			k. Are TSEP-funded payroll costs being prorated on a reasonable basis for local staff working partially on TSEP project activities? <b>Comment [    ]</b>
			l. Were any TSEP-funded activity expenditures for work performed by city or county employees supported by adequate payroll records (timesheets)? <b>Comment [    ]</b>
			m. Does a review of the payroll forms reveal any instances of personnel being paid from, but not working on, program activities? <b>Comment [    ]</b>
			n. Were all budget adjustments between line items in excess of \$5,000 approved by DOC? <b>Comment [    ]</b>
<b>E. LABOR</b>			
<b>1. Debarred Contractor Check</b>			
			a. Did the TSEP recipient contact DOC prior to entering into contracts to determine whether the contractor and subcontractors selected were listed by the Montana Department of Labor and Industry as "debarred contractors"? <b>Comment [    ]</b>
<b>2. State Prevailing Wages</b>			
			a. Does the contract contain a copy of the correct state prevailing wage decision for the project? <b>Comment [    ]</b>  Heavy and Highway            [    ] Wage Decision Date(s)        [    ] Building                            [    ] Wage Decision Date(s)        [    ]
			b. Are the appropriate wage decisions in use? <b>Comment [    ]</b>
<b>3. Payroll Review</b>			

			a. Is Form WH347 (Exhibit 6-F.1), U.S. DOL Payroll Form or its equivalent being used by the Contractor and sub-contractors? Comment [ ]
			b. Are payrolls submitted weekly? Comment [ ]
			c. Is there evidence of weekly payroll review? If yes, type of evidence (e.g., initialed and dated by reviewer). Comment [ ]
			d. Are payrolls numbered sequentially? Comment [ ]
			e. Are payrolls signed by the employer or an authorized representative? Comment [ ]
			f. If applicable, are apprentice/trainee records on file? Comment [ ]
			g. Has overtime been paid? Comment [ ]
			h. Was the appropriate state prevailing wage rate determination posted at the job site and reasonably accessible to employees for their review? Comment [ ]
			i. Were proper payrolls submitted for all working subcontractors? Comment [ ]

#### 4. Employee Interviews

			<p>a. Is there evidence of employee interviews (completed copies of TSEP interview forms on file)? Comment [ ]</p> <p style="text-align: center;"><b>Sample A</b></p> <p>Name of individual interviewed [ ]</p> <p>Contractor: [ ]</p> <p>Job Classification: [ ]</p> <p>If applicable, Group: [ ] Zone [ ]</p> <p>Actual Wage: [\$ ] + Fringe [\$ ] = [ ]</p> <p>Required Wage: [\$ ] + Fringe [\$ ] = [ ]</p> <p>Was the wage correct: [ ]</p> <p>Comment [ ]</p>
--	--	--	---

			<p align="center"><b>Sample B</b></p> <p>Name of individual interviewed [ ]</p> <p>Contractor: [ ]</p> <p>Job Classification: [ ]</p> <p>If applicable, Group: [ ] Zone [ ]</p> <p>Actual Wage: [\$ ] + Fringe [\$ ] = [ ]</p> <p>Required Wage: [\$ ] + Fringe [\$ ] = [ ]</p> <p>Was the wage correct: [ ]</p> <p>Comment [ ]</p> <p align="center"><b>Sample C</b></p> <p>Name of individual interviewed [ ]</p> <p>Contractor: [ ]</p> <p>Job Classification: [ ]</p> <p>If applicable, Group: [ ] Zone [ ]</p> <p>Actual Wage: [\$ ] + Fringe [\$ ] = [ ]</p> <p>Required Wage: [\$ ] + Fringe [\$ ] = [ ]</p> <p>Was the wage correct: [ ]</p> <p>Comment [ ]</p>
			<p>b. Were interviews sufficiently documented?</p> <p>Comment [ ]</p>
			<p>c. Was a representative number of trades covered?</p> <p>Comment [ ]</p>
			<p>d. Are interviews compared against payrolls?</p> <p>Comment [ ]</p>
			<p>e. Are there instances of incorrect wage payments or labor standards violations? If yes, describe.</p> <p>Comment [ ]</p>
			<p>f. Were investigations of noted violations conducted in a timely manner? If not, describe.</p> <p>Comment [ ]</p>
			<p>g. Has restitution been made to the affected workers?</p> <p>Comment [ ]</p>
			<p>h. Were records and documentation sufficient to support the findings and the resolution of violations?</p> <p>Comment [ ]</p>
			<p>i. If labor requirements problems have occurred, have follow-up procedures been agreed on to correct or improve performance?</p>

			Comment [ ]
<b>F. PROPERTY ACQUISITION</b> (Complete only for properties acquired with TSEP funds.)			
			Total number of acquisitions proposed: [ ]
			Number of acquisitions made to date: [ ]
		1. General Information. <i>Complete for each acquisition sampled:</i> Name of property owner: [ ] Telephone Number: [ ] Address of acquired property: [ ] Property Use: Single Fam. Res. [ ]; Fam. Res. [ ]; Business [ ]; Nonprofit [ ] Occupants? [ ] No [ ] Tenants? [ ] No [ ]	
			2. Were the property acquisitions voluntary? Comment [ ]
			3. Does the TSEP recipient have adequate documentation of the acquisition of all real property purchased with TSEP funds? Comment [ ]
			4. Does it appear that all property was acquired in compliance with Montana law? Comment [ ]
		5. Why were the property acquisitions necessary to complete the project? Comment [ ]	
<b>G. PUBLIC FACILITY CONSTRUCTION MANAGEMENT</b>			
<b>1. Construction Contract Procurement Process</b>			
			a. Project location (County and nearest town): [ ]
			b. Description of work: [ ]
			c. Names of newspapers used for bid advertising and dates of publication: [ ]
			d. Bid opening date: [ ]
			e. Were competitive bids obtained through formal advertising for all publicly contracted construction in compliance with 7-5-2301 and 7-5-4302, MCA? <i>Note: Required by Montana law for all construction</i>



			Comment [   ]
			c. Was the contract bid document reviewed by DOC to verify that all proposed construction work was appropriate and eligible for TSEP funding? Comment [   ]
			d. Was firm fixed-price or lump sum compensation used? Comment [   ]

**4. Change Orders**

			<p>a. Have any change orders been issued for the Project? Comment [   ]</p> <p>If "yes", sample and describe representative change orders:</p> <p style="text-align: center;"><u>Sample Number One</u></p> <p>Date: [   ]  Amount: [\$   ]  Purpose: [   ]  Contractor [   ]  Who approved the change order? [   ]  Does it appear that the cost and purpose of the change order were reasonable? [   ]  How was the change order funded? [   ]</p> <p style="text-align: center;"><u>Sample Number Two</u></p> <p>Date: [   ]  Amount: [\$   ]  Purpose: [   ]  Contractor [   ]  Who approved the change order? [   ]  Does it appear that the cost and purpose of the change order were reasonable? [   ]  How was the change order funded? [   ]</p> <p style="text-align: center;"><u>Sample Number Three</u></p> <p>Date: [   ]  Amount: [\$   ]  Purpose: [   ]  Contractor [   ]  Who approved the change order? [   ]  Does it appear that the cost and purpose of the change order were reasonable? [   ]</p>
--	--	--	---

			How was the change order funded?    [   ]
			b.    Did any of the change orders affect the TSEP project budget, scope of work or construction schedule? Comment [   ]
			c.    If yes, did the change order(s) receive prior review and approval? Comment [   ]





## **CHAPTER 11**

### **PROJECT CLOSEOUT**

#### **OVERVIEW**

This chapter describes the steps required to close out a TSEP project. "Project closeout" is the process by which MDOC determines that all applicable administrative actions and all work required by the grant have been completed in accordance with the terms and conditions of the TSEP contract for assistance. A TSEP recipient can submit a project closeout report once the project engineer has issued a Certificate of Substantial Completion.

The ease with which the TSEP recipient can complete these requirements usually depends on the extent to which the recipient has maintained accurate and up-to-date records and files, as outlined in the previous chapters. All of the information needed to complete the project closeout should exist within the project files and require little, if any, additional information gathering.

This chapter focuses on the following:

- reviewing audit requirements (see Chapter 4, Financial Management) related to closeout and determine whether the project requires conditional or final closeout approval from MDOC;
- preparing a Final Project Performance Report and either a Conditional or Final Certification of Completion and Status of Funds Report (depending on audit requirements).

Exhibit 11-A, Project Completion Report Instructions, provides detailed steps designed to assist TSEP recipients in successfully accomplishing project closeout.

#### **APPLICABLE STATE REQUIREMENTS**

##### **STEP 1 -- DETERMINE FINAL AUDIT REQUIREMENTS**

Specific audit requirements must be determined on a case by case basis for TSEP projects due to the complexity and variety of audit situations. As stated in Chapter 4, Financial Management, the Montana Single Audit Act requires that the governing body or managing or executive officer of each local government entity receiving revenues or financial assistance in excess of \$200,000 during the reporting period (one fiscal year) must ensure that an organization-wide audit is completed at least every 2 years. For example, a TSEP project may be audited more than once or not at all before closeout, depending on the

specific situation. If all audit requirements have been met before closeout, the TSEP recipient can submit a "final closeout certification." If the project must be included in the next organization-wide audit or if a final project specific audit must be conducted, the TSEP recipient must submit a "conditional closeout certification to MDOC." At the discretion of MDOC staff, a final closeout certification may be completed when 100% of the TSEP funds have been drawdown, and at least 90% of the funds are included within a local government's audit.

## **STEP 2 -- PREPARE PROJECT COMPLETION REPORT AND CERTIFICATIONS**

**Within 90 days following the Certificate of Substantial Completion being issued, the TSEP recipient must submit a Project Completion Report (PCR) to the TSEP liaison assigned to the project. MDOC will review the PCR and respond within 60 days.**

The completed PCR must consist of the forms contained in the exhibits and include narrative discussions and charts and tables, where possible, to summarize information. (The instructions for completing the PCR are provided as Exhibit 11-A.) The PCR must cover the following topics and provide the information required in Exhibits 11-B and C.

- the progress on each TSEP funded activity and a narrative discussion explaining any differences between proposed accomplishments and actual accomplishments achieved;
- Status of Funds and Certification of Conditional or Final Closeout; and
- the TSEP recipient's acceptance of the project and explanation of open-ended action items, such as compliance with state prevailing wage requirements or other third party claims.

The TSEP recipient must also attach any other evidence of program performance including letters from state agencies or local citizens.

Before the TSEP recipient can conditionally closeout the project, the local government must be in compliance with the auditing and reporting requirements provided for in 2-7-503, and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles (GAAP). Tribal governments must comply with auditing and reporting requirements provided for in OMB Circular A-133 instead of 2-7-503. For new water, wastewater and solid waste districts that did not have an existing accounting system and initially set up an accounting system just to be able to account for expenses related to the project, must now have a complete accounting system that can account for the operational needs of the system.

MDOC may conduct a final monitoring visit prior to project closeout. A final visit is generally not necessary if the project had been previously monitored and found to be in substantial compliance. However, if there were any substantial issues identified through earlier monitoring visits, a final visit may be necessary to ensure that the specific issues have been satisfactorily resolved.

After the audit requirements for the project have been determined in Step 1, the TSEP recipient can then proceed according to one of the applicable steps outlined below and request either a conditional closeout or final closeout from MDOC.

#### Procedure A -- Audit Required - Conditional Closeout Followed by a Final Closeout

TSEP recipients that are required by the Montana Single Audit Act to wait and have the TSEP project covered by the next organization-wide audit of the community and those TSEP recipients that may conduct a separate project audit in order to comply with the Montana Single Audit Act, must submit a conditional closeout certification. The TSEP recipient must submit a Final Project Performance Report and Certification of Completion and Status of Funds Report (Exhibits 11-B and C). Parts A through D are required to be completed; Part E is not required to be completed. The date of the next organization-wide audit must be provided to MDOC.

As discussed in Chapter 4, Financial Management, two percent (2%) of the total authorized grant amount will be retained from the final Request for Funds Report by MDOC until all tasks identified in the contract have been completed by the recipient and approved by MDOC. **Once a conditional closeout has been completed and approved by MDOC the two percent (2%) retainage will be released to the TSEP recipient.**

Some TSEP recipients include funds in their TSEP project budget to cover all or a portion of the audit costs. The percentage of the total audit costs that should be charged to the TSEP project should be proportional to the percentage TSEP funds of the total amount of funds covered by the TSEP recipient's audit. After all other project activities are completed, any other unexpended TSEP funds from the balance remaining will be reserved to cover the TSEP project's share of audit costs, or, in the event that a project-specific audit is conducted, the direct costs of the audit.

It is the responsibility of the TSEP recipient to submit their audit report along with a corrective action plan, if applicable, to the Department of Commerce, Local Government Services Bureau. All audit findings must be resolved within 6 months of the issuance of the audit report.

After the project is audited and sent to MDOC, and all TSEP related audit findings are resolved, Certification of Completion and Status of Funds Report (Exhibit 11-C) must be resubmitted to MDOC. Part E (Final Certification) is required to be completed instead of Parts C and D (Conditional Certification). MDOC will review the certification report and make a final closeout approval determination if all documents are acceptable and all adverse findings in the audit report are resolved. If TSEP funds are to be used to pay a portion of the audit costs, the TSEP recipient must provide information regarding the rationale for the portion of the audit cost to be charged to TSEP. MDOC will then release funds equal to the TSEP portion of the audit cost to the recipient. MDOC will retain any unexpended TSEP funds remaining for other TSEP projects. If insufficient funds exist to cover the final audit cost, the TSEP recipient must pay the difference.

If the final computation of the TSEP grant balance indicates that drawdowns exceeded actual program expenditures, MDOC will require the TSEP recipient to reimburse the state the excess amount of unobligated TSEP funds. If an audit identifies any disallowed costs, the TSEP recipient must resolve the situation to the satisfaction of MDOC or refund immediately to MDOC the total amount identified by the auditor as unallowable. MDOC retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

For any unsettled third party claims against TSEP funds, the TSEP recipient must resolve the claims and submit a final closeout certification after their resolution.

#### Procedure B -- All Audits Completed - Final Closeout

Projects that are ready for final closeout, where no closeout documents have been submitted to MDOC previously, must submit a completed Final Project Performance Report and Certification of Completion and Status of Funds Report (Exhibits 11-B and C) to the TSEP liaison. Part E (Final Certification) is required to be completed; Parts C and D (Conditional Certification) are not. In order to submit a final closeout certification, there cannot be any unresolved third party claims against the TSEP recipient.

MDOC will then release remaining TSEP funds equal to the TSEP portion of the audit cost to the recipient, if applicable. MDOC will retain any remaining balance. If insufficient funds exist to cover the final audit cost, the TSEP recipient must pay the difference.

If the computation of grant balance indicates that drawdowns exceeded actual program expenditures, MDOC will require the TSEP recipient to reimburse the state the excess amount of unobligated TSEP funds. If the audit identified any disallowed

costs, the TSEP recipient must have resolved the situation to the satisfaction of MDOC or refund the total amount identified by the auditor as unallowable to MDOC immediately. MDOC retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

## **RECORDS RETENTION**

**The TSEP recipient must retain all TSEP and the project related records for three years after the final project closeout.**

## **CHAPTER 11**

### **EXHIBITS**

- 11-A Project Completion Report Instructions
- 11-B Final Project Performance Report
- 11-C Certification of Completion and Status of Funds Report

## EXHIBIT 11-A

### PROJECT COMPLETION REPORT INSTRUCTIONS

#### STEP 1 -- COMPLETE FINAL PROJECT PERFORMANCE REPORT (EXHIBIT 11-B)

TSEP recipients must complete the Final Project Performance Report (Exhibit 11-B), to describe the accomplishments of the proposed project as described in the TSEP application, and the actual accomplishments at the end of the project. Attach sheets of paper, if necessary.

Describe the accomplishments in quantifiable terms if applicable (e.g. 3,100 feet of water pipe installed (150 people in 45 households served). Also describe the accomplishments, which are not easily quantifiable (e.g. achieved compliance with State water quality standards or eliminated serious threats to public health.)

Provide an explanation for any differences between the original proposed accomplishments and the final accomplishments.

#### STEP 2 -- COMPLETE CERTIFICATION OF COMPLETION AND STATUS OF FUNDS REPORT (EXHIBIT 11-C)

***NOTE: Both a Conditional Closeout and a Final Closeout require the completion of this step. The only differentiation will be that Conditional Closeouts require completing the requirements stated under "A" and Final Closeouts require completing the requirements stated under "B".***

**A. For a Conditional Closeout, fill out:**

- Part A, Statement of Costs: TSEP Funds (page 11-C.1),
- Part B, Statement of Costs: Non-TSEP Funds (page 11-C.2),
- Part C, Unpaid Costs and Unsettled Third Party Claims (page 11-C.3), and
- Part D, Grantee Certification (page 11-C.3).

**B. For a Final Closeout, fill out:**

- Part A, Statement of Cost: TSEP Funds (page 11-C.1),
- Part B, Statement of Costs: Non-TSEP Funds (page 11-C.2), and
- Part E, Certification of Grantee (page 11-C.4).

In PART B, STATEMENT OF COSTS: NON-TSEP FUNDS, the TSEP recipient summarizes the actual expenditures of non-TSEP funds for the project. A copy of Part B must be included for each non-TSEP funding source involved in the project. The TSEP

recipient must provide an accompanying narrative explanation for any differences between the originally budgeted and actual expenditures of the TSEP and non-TSEP funds expended for the project.

All certifications must be signed by the TSEP recipient's Chief Elected Official or Executive Officer.

### **STEP 3 -- PROVIDE THE FOLLOWING INFORMATION:**

- A. A copy of the project engineer's Certificate of Substantial Completion with the attached punch list, or final inspection report, or letter giving final acceptance of the completed project, as applicable.
- B. If applicable, describe any liens from contractors or suppliers, open-ended action items pertaining to enforcement of state prevailing wage or other labor requirements, or other third party claims against the project which will require restitution, escrow of funds or liquidated damages.
- C. A summary of any citizen comments or complaints regarding the TSEP project received by the local governing body or the local TSEP project manager must be attached to the Project Completion Report. The summary must include the recipient's assessment of the citizen comments and a description of any action taken in response to the comment or complaint.
- D. Please provide a narrative discussion of any comments or suggestions you may have that, based on your TSEP project administration experiences, may improve the TSEP program or project administration for other similar TSEP projects. Your local perspective on TSEP's policies and procedures would be very helpful for improving the program for your community or other future recipients.

## EXHIBIT 11-B

## FINAL PROJECT PERFORMANCE REPORT PROPOSED AND ACTUAL ACCOMPLISHMENTS

TSEP Grant Recipient \_\_\_\_\_

Contract #MT-TSEP-\_\_\_\_ - \_\_\_\_

## PROPOSED ACCOMPLISHMENTS

[illegible]

**ACTUAL ACCOMPLISHMENTS** (If no change from proposed accomplishments simply state "Same")

[illegible]



**EXHIBIT 11-C**  
**CERTIFICATION OF COMPLETION AND STATUS OF FUNDS REPORT**

Check Applicable Status

Name and Address of TSEP Recipient

\_\_\_\_\_ Conditional Approval Request

\_\_\_\_\_ Final Approval Request

MDOC CONTRACT NUMBER #MT-TSEP-\_\_\_\_\_

**PART A. STATEMENT OF COSTS: TSEP FUNDS**

Budget Line Item	Final TSEP Budget	TSEP Funds Expended to Date	Balance Remaining
<b>ADMINISTRATION</b>			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
<b>TOTAL ADMINISTRATION BUDGET</b>			
<b>ACTIVITY BUDGET</b>			
9.			
10.			
11.			
12.			
<b>TOTAL ACTIVITY BUDGET</b>			
<b>TOTAL TSEP BUDGET</b>			

(Instructions: Include a separate copy of PART B for each non-TSEP funding source involved in the project.)

**PART B. STATEMENT OF COSTS: FUNDS**

<b>Budget Line Item</b>	<b>Final Amount Budgeted</b>	<b>Expended to Date</b>	<b>Balance Remaining</b>
<b>ADMINISTRATION</b>			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
<b>TOTAL ADMINISTRATION BUDGET</b>			
<b>ACTIVITY BUDGET</b>			
9.			
10.			
11.			
12.			
13.			
<b>TOTAL ACTIVITY BUDGET</b>			
<b>TOTAL BUDGET</b>			

## CONDITIONAL CLOSEOUT CERTIFICATION

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### **PART C. UNPAID COSTS AND UNSETTLED THIRD PARTY CLAIMS**

1. Are there any unpaid costs, liens, or unsettled third-party claims against the TSEP project? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, describe circumstances and amounts involved on separate sheets and attach.

2. Estimate the amount of the TSEP share of the audit cost required for final closeout.  
\$ \_\_\_\_\_

---

### **PART D. GRANTEE CERTIFICATION**

It is hereby certified that all activities undertaken by the TSEP grant recipient with funds provided under contract #MT-TSEP-\_\_\_\_\_ have been carried out in accordance with said contract and that:

- A. Proper provision has been made by the recipient for payment of all unpaid costs and unsettled third party claims identified above, all labor standards applicable to this contract have been complied with, and there are, to the recipient's knowledge, no outstanding prevailing wage claims;
- B. Statements and information contained in this Project Completion Report are true and correct;
- C. All records related to grant activities are available on request and will be retained for three years after the date of final closeout approval by MDOC;
- D. The project will be audited in accordance with TSEP requirements in the next audit of the recipient;
- E. The average residential monthly user rate is \$\_\_\_\_\_, which is at or above the MDOC target rate.
- F. It is acknowledged that MDOC retains the right to recover funds for disallowed costs resulting from the final audit; and
- G. Any interim loans through the Board of Investment's INTERCAP program have been repaid.
- H. The Status of Funds Report represents the correct total TSEP and non-TSEP expenditures and budget balances as of this date.

---

(Date) (Typed Name and Title of Chief Elected Official) (Signature of Chief Elected Official)

## FINAL CLOSEOUT CERTIFICATION

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### PART E. CERTIFICATION OF GRANTEE

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It is hereby certified that all activities under taken by the TSEP grant recipient with funds provided under contract #MT-TSEP-\_\_\_\_\_ have been carried out in accordance with said contract; and that

- A. There are no unpaid costs, liens, or third party claims remaining against the TSEP project, all prevailing wage requirements applicable to this contract have been complied with, and there are, to the recipient's knowledge, no outstanding prevailing wage claims;
- B. Statements and information contained in this Project Completion Report are true and correct;
- C. All records related to grant activities are available on request and will be kept for three years after the date of final closeout approval by MDOC;
- D. A final audit has been conducted in accordance with TSEP requirements and all findings, if any, have been resolved;
- E. The average residential monthly user rate is \$\_\_\_\_\_, which is at or above the MDOC target rate.
- F. The Status of Funds Report represents the amounts identified in the audit as being the correct total TSEP expenditures accepted for the project;
- G. Any interim loans through the Board of Investment's INTERCAP program have been repaid; and
- H. It is hereby acknowledged that any remaining unexpended balance of TSEP funds for the TSEP project under this contract will be retained or recovered by MDOC.

---

(Date)      (Typed Name and Title of Chief Elected Official)      (Signature of Chief Elected Official)





## CHAPTER 12

### PRELIMINARY ENGINEERING GRANTS

#### OVERVIEW

This chapter describes the specific requirements related to the administration of preliminary engineering grants. The 1999 Legislature added to the Treasure State Endowment Program (TSEP) statute a provision that statutorily appropriates an amount of \$425,000 to the Montana Department of Commerce (MDOC) in each biennium, beginning July 1, 2001 until June 30, 2005, for matching grants to be used for preliminary engineering work. The grant can only be used to fund work related to preliminary engineering.

#### A. START UP REQUIREMENTS

##### 1. TSEP Contract

The TSEP grant recipient is required to enter into a grant agreement with MDOC. MDOC will work with the applicant in establishing a reasonable contract termination date based on project specifics. Other than special exceptions approved by MDOC, grant agreements will not be extended. (See Exhibit 12-A for a sample of the TSEP contract.)

The TSEP grant recipient must appropriate, by resolution, the grant or loan money received from MDOC. The resolution must state the source of the money, the program in which money will be expended and the effective date of the resolution. If the TSEP funds have been appropriated as part of the annual budget process, a separate resolution is not required. (See Exhibit 4-A for a sample budgetary resolution format.)

##### 2. Completing Signature and Depository Forms

These forms must be completed and submitted to MDOC in order to receive TSEP funds. The Signature Certification Form (Exhibit 1-F) authorizes several local officials to sign requests for payment. At least two officials must sign each drawdown request. The Designation of Depository form (Exhibit 1-G) provides that the payment for a grant or a loan will be sent directly to the local government's designated bank account. The Designation of Depository must indicate the name and/or number of an account (general depository) to which MDOC will authorize the direct deposit of TSEP funds. If the TSEP recipient ever

needs to change the authorized signatories or depository, new forms must be submitted to MDOC.

## B. PROCUREMENT REQUIREMENTS

TSEP grant recipients are required to procure the services of a registered professional engineer to complete preliminary engineering studies. All State of Montana and MDOC requirements concerning the procurement of engineering services will apply. **To be eligible for reimbursement, engineering services must be procured in compliance with Section 18-8-201, MCA.** See Chapter 3 Procurement Requirements for more information about the procurement process.

In order to ensure that expenditures will be eligible for reimbursement, contact the TSEP staff for guidance before procuring engineering services or incurring any costs that the local government may later request reimbursement for.

## C. FINANCIAL MANAGEMENT OF THE GRANT

### 1. Expenses Eligible For Reimbursement

TSEP funds can only be used for the preparation of plans, studies, analyses, or research in the preparation of a preliminary engineering report (PER) as described in the most current *Uniform Application Supplement for Montana Public Facility Projects*. A completed PER will be required to be submitted to MDOC, which meets the requirements, and generally follows the format, of the *Uniform Preliminary Engineering Analysis for Montana Public Facility Projects* outline. While MDOC requires that the PER follow the basic structure of the outline, we understand that some deviation from the outline may need to be made at the more detailed levels of the report.

In the preparation of a PER related to bridge projects, TSEP funds can be used to assess the condition of one or more, or all, of the bridges within the applicant's jurisdiction.

Costs that have been incurred or obligated prior to executing a grant contract with MDOC are ineligible for reimbursement with TSEP preliminary engineering grant funds.

## 2. Eligible Match

The TSEP grant recipient must provide a match of local funds toward the cost of eligible activities. The match may be in the form of cash reserves, or it may be borrowed. Other sources of grant funds can be used for preliminary engineering costs in excess of \$30,000.

A firm commitment of matching funds for the entire project is required prior to receipt of TSEP funds. The TSEP grant recipient must provide written documentation of the firm commitment of matching funds. If the TSEP grant recipient is providing cash reserves, a budgetary resolution should be submitted. If a loan will provide the match, a copy of the loan agreement should be submitted.

Costs that have been incurred or obligated prior to executing a grant contract with MDOC, are not considered eligible as match except for special exceptions that may be approved by MDOC.

## 3. Request of TSEP Funds

No TSEP funds appropriated for the 2005 biennium are available for actual distribution until after July 1, 2003.

The Department will reimburse the TSEP grant recipient a maximum of 50% of the total grant amount for incurred expenses within 30 days of receipt of an approved draft PER. The draft report must address each item required in the PER outline as presented in the most current edition of the Uniform Application Supplement for Montana Public Facility Projects. While it is not expected that the document will be complete, it must show clearly that all applicable items required for a PER are being addressed and that the engineer is proceeding toward the preparation of a complete and acceptable final product.

The Department will reimburse the TSEP grant recipient the balance of the grant within 30 days of receipt of an approved final PER for any additionally incurred expenses not claimed in the first payment. The final version must be complete and must address all requirements for the PER outline as presented in the most current edition of the Uniform Application Supplement for Montana Public Facility Projects. A Uniform Environmental Checklist as presented in the most current edition of the Uniform Application Supplement for Montana Public Facility Projects must also be completed and attached to the PER.

A Request for Funds Form (For Preliminary Engineering Grants) is used by TSEP grant recipients to request TSEP funds for reimbursement of eligible

project costs (see Exhibit 12-B). The form, along with a copy of the invoice from the consultant and either the draft or final PER, should be sent to your TSEP staff liaison at the Department of Commerce, CDD/TSEP, 301 South Park Avenue, PO Box 200523, Helena, MT 59620-0523.

Upon receipt, the TSEP staff liaison for your project will review your request to ensure that the form is properly completed and the PER meets minimum requirements and is acceptable to MDOC. MDOC will need approximately 30 days after the TSEP grant recipient has submitted the draft or final PER to review the report and process the TSEP payment. TSEP grant recipients will be notified if the draft or final PER is found to be unacceptable for payment. Whenever possible, the Department of Environmental Quality's State Revolving Fund staff will be involved in reviewing the PER. Depending on their workload, review times could potentially take longer.

#### **D. CLOSEOUT OF THE GRANT**

Prior to final payment, the TSEP grant recipient must submit to MDOC a complete PER that addresses all of the requirements of the PER outline as presented in the most current edition of the Uniform Application Supplement for Montana Public Facility Projects. A Uniform Environmental Checklist as presented in the most current edition of the Uniform Application Supplement for Montana Public Facility Projects must also be completed and attached to the PER.

Prior to final payment, the TSEP grant recipient must provide a certification to MDOC showing the sources of funds that the TSEP grant recipient has expended in the preparation of the PER. (See Exhibit 12-C)

The TSEP grant recipient must retain all of the project related records for three years after the final closeout of the TSEP grant.

## **CHAPTER 12**

### **EXHIBITS**

- 12-A TSEP Contract for Preliminary Engineering Grants
- 12-B Request for Funds Form for Preliminary Engineering Grants
- 12-C Final Closeout Certification for Preliminary Engineering Grants



## EXHIBIT 12-A

### TSEP CONTRACT FOR PRELIMINARY ENGINEERING GRANTS

#### TREASURE STATE ENDOWMENT PROGRAM

CONTRACT #MT-TSEP-PE\_\_\_\_\_

FOR \_\_\_\_\_, MONTANA, \_\_\_\_\_ PROJECT

This Contract is entered into by \_\_\_\_\_, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

#### Section 1. PURPOSE

The purpose of this Contract is to provide funding for preliminary engineering costs associated with the planning of \_\_\_\_\_ System Improvements.

#### Section 2. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Treasure State Endowment Program (TSEP) preliminary engineering report assistance is incorporated into this Contract by reference and the representations made in it are binding upon the Grantee.

#### Section 3. ACCEPTANCE OF TSEP PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which the Grantee delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing the TSEP program.

- (c) The Grantee acknowledges that the Department will review the PER only to the extent necessary to ensure that the information presented in the PER meets the basic requirements of the *Uniform Preliminary Engineering Analysis for Montana Public Facility Projects* outline (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in the most recent edition of the *TSEP Application Guidelines*).
- (d) The Grantee further acknowledges that the funding of the PER under this Contract does not imply the Department's approval or endorsement of the PER's contents and will have no influence on the Department's ranking of a subsequent application from the Grantee for a TSEP construction grant.

#### Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect when signed by all parties to the Contract. The Grantee will have until \_\_\_\_, 200\_\_, to complete the work described in Section 5. SCOPE OF WORK. The Department may grant an extension for completion upon request and showing of good cause by the Grantee. A request for an extension must be submitted at least 45 days prior to the date noted above.

#### Section 5. SCOPE OF WORK

The Grantee will engage in activities as set forth in the Grantee's application for TSEP grant assistance **[and as supplemented with additional information dated \_\_\_\_]** which by this reference **[is] [are]** made a part of this Contract. The primary product of this contract will be the preparation of a PER, which meets the requirements, and generally follows the format, of the *Uniform Preliminary Engineering Analysis for Montana Public Facility Projects* outline (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in the most recent edition of the *TSEP Application Guidelines*), and that will include a completed Uniform Environmental Checklist that will become an attachment to the PER. The completed PER will be submitted to the Department. Other components of the project will include:\_\_\_\_\_.

#### Section 6. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- (a) The Department will use funds from the Treasure State Endowment Special Revenue Account as authorized by 90-6-710(1), MCA, and which are statutorily appropriated.
- (b) The Department agrees that once revenues from the Treasure State Endowment Special Revenue Account are available, it will reimburse the Grantee for

successfully completing the activities set forth in Section 5. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds the Department will reimburse all eligible expenses that have been incurred and that are clearly and accurately supported by documentation submitted by the Grantee. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.

- (c) The Department will authorize the Grantee to draw up to \$\_\_\_\_\_ against the TSEP funding awarded to the Grantee.
- (d) The Grantee agrees to contribute, in local non-grant funds, no less than the amount provided by the Department towards the cost of completing the activities set forth in Section 5. SCOPE OF WORK. **(substitute the following sentence if a hardship grant is awarded, in order to reflect a lower match.)** The Grantee agrees to contribute, in local non-grant funds, an amount no less than \$\_\_\_\_\_ towards the cost of completing the activities set forth in Section 5. SCOPE OF WORK.
- (e) Prior to final payment, the Grantee agrees to submit a certification to the Department showing the sources of all funds that the Grantee has expended in the preparation of the PER. The Grantee understands that the final payment by the Department will be based upon the amount expended by the Grantee, so that the Grantee has expended an amount equal to the amount provided by the Department. **(substitute the following sentence if a hardship grant is awarded, in order to reflect a lower match.)** The Grantee understands that the final payment by the Department will be based upon the amount expended by the Grantee, so that the Grantee has expended no less than \$\_\_\_\_\_.
- (f) The Department will reimburse the Grantee a maximum of 50% of the total grant amount for incurred expenses within 30 days of receipt of an approved draft PER. The draft report shall address each item required in the PER outline as presented in the most current edition of the *Uniform Application Supplement for Montana Public Facility Projects* (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in the most recent edition of the *TSEP Application Guidelines*). While it is not expected that the document will be complete, it must show clearly that all applicable items required for a PER are being addressed and that the engineer is adequately proceeding toward the preparation of a complete and acceptable final product.
- (g) The Department will reimburse the Grantee the balance of the grant within 30 days of receipt of an approved final PER for any additionally incurred expenses not claimed in the first payment. The final version of the PER shall be complete and shall address all requirements of the PER outline as presented in the most current edition of the *Uniform Application Supplement for Montana Public Facility Projects* (or for bridges *Preliminary Engineering Report Outline for Bridge Projects* found in

the most recent edition of the *TSEP Application Guidelines*), including the Uniform Environmental Checklist.

- (h) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.
- (i) Any authorized funds not expended under this grant will revert to the Department.

#### Section 7. LIAISON

\_\_\_\_\_, TSEP Program Assistant, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. \_\_\_\_\_, \_\_\_\_\_, is the Grantee's liaison with the Department.

#### Section 8. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in \_\_\_\_\_, Montana.
- (b) The Grantee will retain all of the project related records for three years after the final closeout of the TSEP grant.
- (c) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

#### Section 9. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Agreement will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

## Section 10. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

***(Substitute the following for contracts with Tribal governments.)*** The Grantee agrees that none of its employees, officers or agents will participate in the selection of a contractor to perform work under this Contract or in the award or administration of a contract to be funded under this Contract if a conflict of interest, real or apparent, would arise. A prohibited conflict would arise if:

- (a) The employee, officer, or agent,
- (b) Any member of his or her immediate family,
- (c) His or her partner, or
- (d) An organization that employs, or is about to employ, any of the persons described above,

has a financial or other interest in the firm selected for award.

In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

## Section 11. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

## Section 12. MODIFICATION AND ASSIGNABILITY OF CONTRACT

This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this Contract, are valid or binding. This Contract may not be enlarged, modified, or altered except upon written agreement, and does not imply any

continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

### Section 13. INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipients' performance under this Contract.
- (b) Further, the Grantee will indemnify, hold harmless, and defend the Department and the State of Montana against any and all claims, demands, damages, costs, expenses, or liability arising out of the Grantee's or any subrecipients' performance of this Contract. In the event the Department or the State of Montana is named as a codefendant in any action relating to activities to be performed by the Grantee or subrecipient under this Contract, the Grantee will notify the Department of such fact and will represent the Department in the legal action unless the Department undertakes to represent itself as a codefendant in the legal action in which case the Department will bear its own litigation costs, expenses, and attorneys' fees.

### Section 14. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) Termination Due to Noncompliance with Contract Terms. If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (b) Effect of Termination. In the event of termination due to the Grantee's failure to comply with the terms of this Contract, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this

Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

#### Section 15. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

***(Substitute the following for contracts with Tribal governments.)***

- (a) In the event that a dispute or claim arises under this Contract, the laws of the State of Montana will govern as to the interpretation and performance of this Contract, and any judicial proceeding concerning the terms of this Contract will be brought in the District Court of the First Judicial District of the State of Montana;
- (b) The Grantee's Tribal government waives the Tribes immunity from suit in State court on any issue specifically arising from this Contract; and

The Grantee's Tribal government waives any right it may have with respect to this Contract to exhaust tribal remedies.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

\_\_\_\_\_ (Grantee)      Department of Commerce  
Community Development Division

\_\_\_\_\_  
(Chief Elected Official)      (Name), Administrator

Date: \_\_\_\_\_      Date: \_\_\_\_\_



**TREASURE STATE ENDOWMENT PROGRAM (TSEP)**  
**REQUEST FOR FUNDS FORM**  
**FOR PRELIMINARY ENGINEERING GRANTS**

<b>SECTION I - TSEP RECIPIENT INFORMATION</b>				
TSEP CONTRACT NUMBER  MT-TSEP-PE-_____	DRAWDOWN NUMBER #	TOTAL AMOUNT REQUESTED		
NAME AND ADDRESS OF TSEP RECIPIENT:	MAKE DEPOSIT PAYABLE TO:    ACCOUNT & ABA (Routing) NUMBERS:			
<b>SECTION II - FINANCIAL INFORMATION</b>				
	A Amount Budgeted	B Amount Expended Prior To This Draw	C Amount Requested	D Balance Remaining After This Draw
ENGINEERING SERVICES				
<b>SECTION III - PROJECT STATUS (Please provide a brief description of what has been accomplished)</b>				
<b>SECTION IV - LOCAL APPROVAL</b>				
DATE:	SIGNATURE		TITLE	
DATE:	COUNTERSIGNATURE		TITLE	
<b>SECTION V - MDOC APPROVAL</b>				
APPROVED BY:				
TITLE:				
DATE:				



## EXHIBIT 12-C

### TREASURE STATE ENDOWMENT PROGRAM (TSEP) FINAL CLOSEOUT CERTIFICATION FOR PRELIMINARY ENGINEERING GRANTS

Name and Address of  
Local Government

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MDOC Contract Number MT-TSEP-PE-\_\_\_\_\_

#### PART A. STATEMENT OF COSTS:

	Amount Budgeted	Amount Expended to Date	Balance Remaining
TSEP Funds			
Local Funds			
Other Funds: (Specify)			
<b>Total</b>			

#### PART B. CERTIFICATION OF TSEP GRANT RECIPIENT

It is hereby certified that all activities under taken by the TSEP grant recipient with funds provided under contract MT-TSEP-PE-\_\_\_\_\_ have been carried out in accordance with said contract; and that

- A. There are no unpaid costs, liens, or third party claims remaining against the preliminary engineering work funded by the TSEP grant;
- B. Statements and information contained in this certification are true and correct;
- C. All records related to the activities under this contract are available on request and will be kept for three years after the date of final closeout approval by MDOC;
- D. The local funds stated in PART A. STATEMENT OF COSTS are the grant recipient's own local funds and not grants;
- E. It is hereby acknowledged that any remaining unexpended balance of TSEP funds for the activities under this contract will be retained or recovered by MDOC.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed Name and Title of Chief Elected  
Official or Executive Officer)

\_\_\_\_\_  
(Signature of Chief Elected Official  
or Executive Officer)







## **CHAPTER 13**

### **EMERGENCY GRANTS**

#### **OVERVIEW**

This chapter describes the specific requirements related to the award and administration of emergency grants. Emergency grants are only available to remedy conditions that if allowed to continue, until legislative approval could be obtained to fund the project through the biennial TSEP cycle, it would endanger the public health or safety and expose the applicant to substantial financial risk. An "emergency" means the imminent threat or actual occurrence of a disaster causing immediate peril to life, property, or the environment, which with timely action could be averted or minimized. MDOC may not make an emergency grant if it determines that through the implementation of reasonable management practices, the applicant can forestall the risks to health or safety until legislative approval can be obtained.

#### **A. APPLICATION PROCEDURES**

In order to determine whether to fund a request for emergency grant funds, MDOC will coordinate with the Department of Natural Resources and Conservation (DNRC), the Department of Environmental Quality, and the Department of Transportation, depending on the type of project. Since DNRC also funds emergency projects and has the engineering expertise to evaluate an emergency situation, applicants that have a water, wastewater or solid waste related emergency are requested to first contact DNRC (Bob Fischer, 444-6688). DNRC will contact MDOC if TSEP funds are needed. Applicants that have a bridge related emergency should contact TSEP directly (841-2770). The Department will consult with the appropriate agencies to help determine if a project should be funded.

Typically, emergency grants are limited to \$30,000 per project.

Upon being contacted by an applicant or DNRC, the Emergency Grant Application Review Form will be completed by the MDOC to evaluate whether an emergency project should be funded (see Exhibit 13-A).

#### **B. START UP REQUIREMENTS**

While MDOC recognizes the emergency nature of these types of projects, there are still administrative requirements that must be completed. MDOC will make every effort to fulfill its requirements in a timely manner. In order to allow the project to move forward,

MDOC will verbally authorize specific actions that will be allowed by the TSEP grant recipient prior to having completed certain actions such as signing a contract with MDOC. However, the TSEP recipient must fulfill its requirements as soon as possible. **No TSEP funds will actually be sent to the TSEP grant recipient until a contract has been signed and other necessary requirements are completed.**

1. TSEP Contract

The TSEP grant recipient is required to enter into a grant agreement with MDOC. (See Exhibit 13-B for a sample of the TSEP contract.)

The TSEP grant recipient must appropriate, by resolution, at the earliest appropriate time, the grant received from MDOC. The resolution must state the source of the money, the program in which money will be expended and the effective date of the resolution. (See Exhibit 4-A for a sample budgetary resolution format.)

2. Completing Signature and Depository Forms

These forms must be completed and submitted to MDOC to receive TSEP funds. The Signature Certification Form (Exhibit 1-F) authorizes local officials to sign requests for payment. At least two officials must sign each drawdown request. The Designation of Depository form (Exhibit 1-G) provides that the payment for a grant or a loan will be sent directly to the local government's designated bank account. The Designation of Depository must indicate the name and/or number of an account (general depository) to which MDOC will send the TSEP funds.

## C. **PROCUREMENT REQUIREMENTS**

Due the emergency nature of these projects, the procurement procedures normally followed by local governments may be waived. Section 18-8-211, MCA, provides exceptions to procuring engineers when an emergency requires the immediate execution of the work involved. Sections 7-5-4302 (municipalities) and 7-5-2304 (counties), MCA, provides exceptions to the advertising and bidding requirements for procuring a contractor during emergencies. Since county water, wastewater and solid waste districts are a sub-unit of county government, MDOC has concluded that the exceptions under 7-5-2304, MCA, also apply to them in emergency situations.

Section 7-5-4302, MCA, requires that three-fourths of the members of the city council present at the meeting determine what will best meet the emergency and serve the public interest. The proceedings of the meeting and the subsequent vote must be duly recorded at length in the minutes. The same requirement will be required of the other

types of applicants and their governing bodies. If the governing body is composed of only three individuals, a two-thirds majority is required.

## **D. FINANCIAL MANAGEMENT OF THE GRANT**

### **1. Expenses Eligible For Reimbursement**

Emergency grant funds will only be provided in a sufficient amount to mitigate a problem that is critical to the operation of a system. Only those costs that are considered essential to resolving the emergency will be considered eligible.

Funding will not be provided for feasibility studies, research projects; or public information efforts. Funding will not be provided for preventive maintenance or to provide a backup to an existing system component.

Costs that have been incurred prior to being authorized by MDOC may potentially be eligible for reimbursement with TSEP emergency grant funds. However, in order to ensure that expenditures will be eligible for reimbursement, contact the TSEP staff for guidance before procuring any supplies, equipment, or professional or construction services.

### **2. Request of TSEP Funds**

The Department will reimburse the TSEP grant recipient, the amount stated in the contract, for incurred expenses. A Request for Funds Form (For Emergency Grants) is used by TSEP grant recipients to request TSEP funds for reimbursement of eligible project costs (see Exhibit 13-C). The form, along with supporting documentation such as a copy of invoices, should be sent to your TSEP staff liaison at the Department of Commerce, Treasure State Endowment Program, 301 South Park Avenue, PO Box 200523, Helena, MT 59620-0523.

Upon receipt, the TSEP staff liaison for your project will review your request to ensure that the form is properly completed. Funds should normally be received within three weeks after receipt of the form.

## **E. CLOSEOUT OF THE GRANT**

Upon completion of the project, the TSEP grant recipient must provide a Certification of Completion and Status of Funds Report for Emergency Grants to MDOC (See Exhibit 13-D). All of the project related records must be retained for three years after the final closeout of the TSEP grant.

## **CHAPTER 13**

### **EXHIBITS**

- 13-A      Emergency Grant Application Review Form
- 13-B      TSEP Contract for Emergency Grants
- 13-C      Request for Funds Form for Emergency Grants
- 13-D      Certification of Completion and Status of Funds Report for Emergency Grants

## EXHIBIT 13-A

### TREASURE STATE ENDOWMENT PROGRAM

### EMERGENCY GRANT APPLICATION REVIEW FORM

#### APPLICANT AND PROJECT INFORMATION:

Date Request is Received:

Applicant:

Address:

Contact Person and Telephone Number:

Nature of Emergency:

Proposed Project:

Estimated Total Cost of Project: \$

Itemize the proposed expenditures:

Amount of TSEP Funds Requested: \$

#### REVIEW OF REQUEST:

1. Is the applicant eligible to apply for TSEP funding? Yes ☐ No ☐
2. Is the proposed project eligible for funding? Yes ☐ No ☐
3. Is the grant necessary to remedy a condition(s) that if allowed to continue until legislative approval could be obtained would endanger the public health or safety and expose the applicant to substantial financial risk? Yes ☐ No ☐

Details:

4. Can the implementation of reasonable management practices forestall the risks to health or safety until legislative approval can be obtained? Yes ☐ No ☐

Details:

5. Is all of the proposed emergency project critical to the proper operation of a system? Yes ☐ No ☐

Details:

6. Is any proposed funding to be used for preventive maintenance or to provide a backup to an existing system component? Yes ☐ No ☐

Details:

7. Are all of the proposed expenditures essential to resolving the emergency and necessary for completing the proposed emergency project? Yes ☐ No ☐

Details:

8. Will any further actions beyond what has been proposed be necessary to fully resolve the emergency? Yes ☐ No ☐

Details:

9. Has the applicant contributed as much financial and other resources as possible towards completing the proposed emergency project? Yes ☐ No ☐

Details:

10. Is funding available from any other source, including the sponsor?  
Yes ☐ No ☐

Details:

### **SITE VISIT:**

Date:

State Agency Person Conducting Site Visit:

Contact Person and Telephone Number:

Brief Summary of Visit:

Conclusions:

**ACTIONS TO BE TAKEN:**

Request:      Approved ☐                      Approved but Modified ☐                      Denied ☐

Amount Awarded: \$

Reasons for Actions Taken:

Details of Actions Taken by MDOC:

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Jim Edgcomb, Manager  
Treasure State Endowment Program

Date: \_\_\_\_\_

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Having reviewed the information stated above, I concur with the action to be taken by the Treasure State Endowment Program.

---

Mark Simonich, Director  
Department of Commerce

Date: \_\_\_\_\_



**EXHIBIT 13-B**  
**TSEP CONTRACT**  
**FOR EMERGENCY GRANTS**

**TREASURE STATE ENDOWMENT PROGRAM**

**CONTRACT #MT-TSEP-EG\_\_\_\_\_**

**FOR \_\_\_\_\_, MONTANA, \_\_\_\_\_ PROJECT**

This Contract is entered into by \_\_\_\_\_, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

**Section 1. PURPOSE**

The purpose of this Contract is to provide funding for project activities described in Section 5 of this Contract to resolve an emergency situation with the Grantee's \_\_\_\_\_ System.

**Section 2. APPLICATION INCORPORATED BY REFERENCE**

The information submitted by the Grantee as stated in the Emergency Grant Application Review and Action Taken Form is incorporated into this Contract by reference and the representations made in it are binding upon the Grantee.

**Section 3. ACCEPTANCE OF TSEP PROGRAM REQUIREMENTS**

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which the Grantee delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing the Program.

#### Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect on when signed by all parties to the Contract and will terminate upon final project closeout by the Department.

#### Section 5. SCOPE OF WORK

The Grantee will engage in activities as set forth in the Emergency Grant Application Review and Action Taken Form **[and as supplemented with additional information dated \_\_\_\_ ]** which by this reference **[is] [are]** made a part of this Contract. The major components of the project include: \_\_\_\_\_. *(Add only if applicable)* The project will be constructed as described in engineering plans and specifications submitted by the Grantee **[and approved by the Montana Department of Environmental Quality]**.

#### Section 6. BUDGET

The Grantee has estimated that the project will cost \$\_\_\_\_\_ and will contribute a minimum of \$\_\_\_\_\_ towards the cost of the project. Additional funding in the amount of \$\_\_\_\_\_, will be obtained from \_\_\_\_\_.

#### Section 7. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- (a) The Department will use funds from the Treasure State Endowment Special Revenue Account as authorized by 17-5-703 and 90-6-701 through 90-6-710, MCA, and appropriated by the 58th Legislature in House Bill 11.
- (b) The Department agrees that it will reimburse the Grantee for successfully completing the activities set forth in Section 5. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds the Department will reimburse all eligible expenses as provided in this Contract. The Department will authorize the Grantee to draw up to \$\_\_\_\_\_ against the TSEP funding. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (c) If the actual cost of the project is less than the estimate by the Grantee, the Department reserves the right to reduce the amount that will be paid to the Grantee by the same amount.
- (d) The Department will reimburse the Grantee for approved eligible expenses according to the documentation submitted by the Grantee to support the necessary

expenditures. The Department will not reimburse the Grantee for any expenses not clearly and accurately supported by the Grantee's records.

- (e) If the Grantee is unable to comply with the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.
- (f) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.

#### Section 8. LIAISON

\_\_\_\_\_, TSEP Program Specialist, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. \_\_\_\_\_, \_\_\_\_\_, is the Grantee's liaison with the Department.

#### Section 9. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in \_\_\_\_\_, Montana.
- (b) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

#### Section 10. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Agreement will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

#### Section 11. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

#### Section 12. PROPERTY MANAGEMENT AND EQUIPMENT

Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or subgrantee respectively.

#### Section 13. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

#### Section 14. MODIFICATION AND ASSIGNABILITY OF CONTRACT

This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this Contract, are valid or binding. This Contract may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

#### Section 15. INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipients' performance under this Contract.
- (b) Further, the Grantee will indemnify, hold harmless, and defend the Department and the State of Montana against any and all claims, demands, damages, costs,

expenses, or liability arising out of the Grantee's or any subrecipients' performance of this Contract. In the event the Department or the State of Montana is named as a codefendant in any action relating to activities to be performed by the Grantee or subrecipient under this Contract, the Grantee will notify the Department of such fact and will represent the Department in the legal action unless the Department undertakes to represent itself as a codefendant in the legal action in which case the Department will bear its own litigation costs, expenses, and attorneys' fees.

## Section 16. CONTRACT AMENDMENT

The Department will consider requests by the Grantee to amend this Contract. However, before the Department will approve an amendment, the Grantee must clearly demonstrate that the modification is justified and will enhance the overall impact of the original project.

## Section 17. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) Termination Due to Noncompliance with Contract Terms. If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (b) Effect of Termination. In the event of termination due to the Grantee's failure to comply with the terms of this Contract or the project's adverse environmental impact, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

Section 18. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

\_\_\_\_\_ (Grantee)      Department of Commerce

\_\_\_\_\_  
(Chief Elected Official)

\_\_\_\_\_  
(Name), Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 13-C**

**TREASURE STATE ENDOWMENT PROGRAM (TSEP)  
REQUEST FOR FUNDS FORM  
FOR EMERGENCY GRANTS**

<b>SECTION I - TSEP RECIPIENT INFORMATION</b>				
TSEP CONTRACT NUMBER MT-TSEP-EG-_____		DRAWDOWN NUMBER #		TOTAL AMOUNT REQUESTED
NAME AND ADDRESS OF TSEP RECIPIENT:		MAKE DEPOSIT PAYABLE TO:    ACCOUNT & ABA (Routing) NUMBERS:		
<b>SECTION II - FINANCIAL INFORMATION</b>				
<b>ACTIVITY</b>	<b>A</b> Amount Budgeted	<b>B</b> Amount Expended Prior To This Draw	<b>C</b> Amount Requested	<b>D</b> Balance Remaining After This Draw
<b>TOTAL</b>				
<b>SECTION III - PROJECT STATUS (Please provide a brief description of what has been accomplished)</b>				
<b>SECTION IV - LOCAL APPROVAL</b>				
DATE:	SIGNATURE		TITLE	
DATE:	COUNTERSIGNATURE		TITLE	
<b>SECTION V - MDOC APPROVAL</b>				
APPROVED BY:				
TITLE:				
DATE:				



**EXHIBIT 13-D**  
**CERTIFICATION OF COMPLETION AND STATUS OF FUNDS REPORT**  
**FOR EMERGENCY GRANTS**

Name of TSEP Recipient: \_\_\_\_\_

MDOC Contract Number MT-TSEP-EG \_\_\_\_\_

**PART A: ACCOMPLISHMENTS**

Proposed Accomplishments

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Actual Accomplishments (If no change from proposed accomplishments simply state "Same")

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**PART B: STATEMENT OF COSTS**

**STATEMENT OF COSTS: TSEP FUNDS**

TYPES OF EXPENDITURES	TSEP Funds Expended	Balance Remaining
<b>TOTAL TSEP FUNDS</b>		

(Instructions: Include a separate Statement of Costs for each non-TSEP funding source involved in the project.)

**STATEMENT OF COSTS: FUNDS**

TYPES OF EXPENDITURES	Funds Expended	Balance Remaining
<b>TOTAL</b> _____ <b>FUNDS</b>		

**PART C. GRANTEE CERTIFICATION**

It is hereby certified that all activities undertaken by the TSEP grant recipient with funds provided under contract #MT-TSEP-EG\_\_\_\_\_ have been carried out in accordance with said contract and that:

- A. There are no unpaid costs, liens, or third party claims remaining against the TSEP project, all prevailing wage requirements applicable to this contract have been complied with, and there are, to the recipient's knowledge, no outstanding prevailing wage claims;
- B. Statements and information contained in this report are true and correct; and
- C. All records related to grant activities are available on request and will be retained for three years after the date of final closeout approval by MDOC.

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(Date)	(Typed Name and Title of Chief Elected Official or Executive Officer)	(Signature of Chief Elected Official or Executive Officer)
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# SIGNATURE CERTIFICATION FORM

This is to certify that the following officials<sup>1</sup> are authorized to sign the request for payment of Montana Treasure State Endowment Program (TSEP) funds:

Typed Name

My Commission expires

<sup>2</sup> Suggested witness is an elected official other than one of the two signatories.





